




3 1761 11637043 8

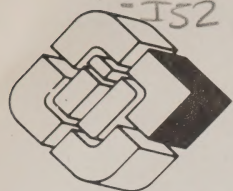






Digitized by the Internet Archive  
in 2023 with funding from  
University of Toronto

<https://archive.org/details/31761116370438>



Canadian Law Information Council  
Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5G4 (613) 236-9766

No. 1

Date March 20, 1979

Notes of Recent Decisions

rendered by the

Immigration Appeal Board

by Elizabeth Britt Côté

Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

## Editor's Note

The Immigration Act 1976 was proclaimed in force on April 10, 1978. In accordance with section 125(3) of the Act, appeals filed before proclamation but disposed of thereafter, have been dealt with "in conformity" with the new Act, except appeals brought by persons claiming to be refugees protected by the United Nations Convention and Protocol relating to the Status of Refugees, which have been dealt with and disposed of pursuant to the Immigration Appeal Board Act (repealed). Résumés of these latter cases all bear the catchword "Transitional".

Résumés of selected reasons for judgment in cases decided prior to proclamation and which in the opinion of the editor may be of assistance to the profession are included in this issue. Résumés will be provided of all reasons for judgment in cases decided after April 10, 1978.

DEPORTATION ORDERS

1.1 Vukasin Mitrovic v. M.M.I.

DEPORTATION ORDER - PERSON ENTERING CANADA WITH A VISA - VALIDITY OF VISA AFTER STATUS GRANTED - RIGHT OF APPEAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 11(1)(b) - IMMIGRATION REGULATIONS, PART I, ss. 2, 30.

DOUBLE APPEAL - REFUGEE CLAIM - RIGHT OF APPEAL PURSUANT TO s. 11(1)(b) OF THE IMMIGRATION APPEAL BOARD ACT - MEANING OF THE WORD "OR" IN s. 11 OF THE IMMIGRATION APPEAL BOARD ACT - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 7(3), 18, 18(1)(e)(iv), 18(1)(e)(viii), (2), 22 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(1)(c), (3).

1.2 Dieter Vogel v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - STOLEN PASSPORT - PASSPORT AN ACT OF STATE - CAN IT BE QUESTIONED? - IMPROPER MEANS - MEANING OF "IMPROPER MEANS" USED IN s. 18(1)(e)(viii) OF THE IMMIGRATION ACT - MENS REA - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2), 25, 26(3).

BIAS ON THE PART OF THE SPECIAL INQUIRY OFFICER

1.3 Mian Mohammad Khurshid Alam v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - IMPROPERLY ISSUED DOCUMENT PERTAINING TO ADMISSION - FORGED SIGNATURE OF VISA OFFICER - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2).

1.4 Gwat Yin Chan v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - APPLICATION FOR PERMANENT RESIDENCE SHOWING MARITAL STATUS AS SINGLE - BURMESE AFFIDAVIT OF MARRIAGE - NO COHABITATION - WHETHER MARRIAGE VALID BY LAW OF BURMA - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2).

SPONSORSHIPS

1.5 Edith De Rojas v. M.E.I.

SPONSORSHIP - NO REASON FOR THE REFUSAL IN THE LETTER - PURPOSE OF s. 19(2) OF THE IMMIGRATION APPEAL BOARD ACT - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 17, 19(2) - IMMIGRATION APPEAL BOARD RULES, r. 6(3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d).

1.6 Susie Young v. M.E.I.

SPONSORSHIP - JURISDICTION OF THE BOARD - SPONSOR RESIDING OUTSIDE CANADA - RIGHT TO SPONSOR - INTENTION TO ABANDON HER CANADIAN RESIDENCE - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 22 - IMMIGRATION REGULATIONS, PART I, s. 33.

1.7 Jagdish Kaur Bharaj v. M.E.I.

SPONSORSHIP - FAMILY CLASS - HALF-BROTHERS ISSUE OF FATHER'S POLYGAMOUS MARRIAGE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION REGULATIONS, PART I, ss. 2(aab), 2(d)(i), 31(1)(d).

1.8 Chantal Sylvie Ajah v. M.E.I.

SPONSORSHIP - VALIDITY OF CANADIAN MARRIAGE - ALLEGATION OF BIGAMY - BURDEN OF PROOF - PRESUMPTION OF VALIDITY OF FOREIGN MARRIAGE - FOREIGN LAW - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 2(1)(f) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - MARRIAGE ACT, R.S.O. 1970, c. 261, s. 46.

SPONSORSHIP - TERMS OF REFUSAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

1.9 Gurmukh Singh Gill v. M.E.I.

SPONSORSHIP - POLYGAMOUS MARRIAGE - SPONSOR SON OF SECOND WIFE - WHETHER FATHER SPONSORABLE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, ss. 2(d)(i), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

1.10 Jagpal Singh Gill v. M.E.I.

SPONSORSHIP - SPONSOR SON OF SECOND WIFE - WHETHER FATHER SPONSORABLE - FOREIGN CUSTOMARY MARRIAGE AND CUSTOMARY DIVORCE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, ss. 2(c), 2(d)(i), 2(i), 31(1)(d), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

REFUGEE CLAIMS

1.11 Juan Alejandro Araya Heredio v. M.M.I.

REFUGEE CLAIM - HUSBAND AND WIFE - HUSBAND HARASSED - FIRST CLAIM TO REFUGEE STATUS MADE IN CANADA THROUGH OTHER COUNTRIES VISITED - WIFE THREATENED WITH RAPE - FAMILY UNIT - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(t), 34(1) - IMMIGRATION REGULATIONS, PART I, s. 28(1) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

1.12 Jose Manuel Duarte Inoque v. M.E.I.

REFUGEE CLAIM - MEMBER OF PARTICULAR GROUP - EMPLOYEE OF SECRET POLICE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(t), 7(1)(c), 22 - IMMIGRATION REGULATIONS, PART I, ss. 28(1), 34(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 14, 15.

1.13 Teum Mehamed Abubeker v. M.M.I.

REFUGEE CLAIM - CHANGE IN CONDITIONS IN HOME COUNTRY - REFUGEE SUR PLACE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(x), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

MOTIONS FOR REOPENING APPEAL

1.14 M.M.I. v. Zaheer Ali Manki

MOTION FOR REOPENING APPEAL - MINISTER'S MOTION - BOARD'S JURISDICTION TO REOPEN THE HEARING - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 15, 17 - IMMIGRATION REGULATIONS, PART I, ss. 28(1), 31.

1.15 Eric Byron Douglas v. M.M.I.

MOTION FOR REOPENING APPEAL - DISTINGUISHED FROM REHEARING - MOTION ASKING BOARD TO CORRECT ALLEGED ERROR IN PRIOR HEARING - NATURAL JUSTICE - JURISDICTION - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 15.

1.16 Orazio Cardoni v. M.E.I.

MOTION FOR REOPENING APPEAL - JURISDICTION - APPEAL HEARD IN 1966 BY FORMER IMMIGRATION APPEAL BOARD - IMMIGRATION APPEAL BOARD ACT, S.C. 1966-67, c. 90, ss. 1, 33 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3 - AN ACT RESPECTING THE REVISED STATUTES OF CANADA, R.S.C. 1970, c. 48, s. 9.

EVIDENCE

1.17 Dieter Vogel v. M.M.I.

EVIDENCE - ADMISSIBILITY OF THREE STATUTORY DECLARATIONS - IMMIGRATION APPEAL BOARD RULES, r. 12(1) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 26(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 7(2)(c), 14, 15.

DEPORTATION ORDERS

1.18 Beverley Campbell v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FAILURE TO DISCLOSE EXISTENCE OF MINOR CHILDREN WHEN APPLYING FOR ADMISSION - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 18(1)(e)(viii) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 27(1)(e), 125(3).

1.19 Rahila Yasmin Kham v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - APPLICATION FOR PERMANENT RESIDENCE SHOWING STATUS AS SINGLE - VALIDITY OF A CUSTOMARY MUSLIM MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 2(1), 27(1)(e), 72(1), 125(3), 128 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 18(1)(e)(viii) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 11.

SPONSORSHIPS

1.20 Jaswant Singh Lit v. M.E.I.

SPONSORSHIP - JURISDICTION OF BOARD TO SEND BACK FOR FURTHER CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 7(2), 17 - IMMIGRATION REGULATIONS, PART I, s. 31(1)(f) - IMMIGRATION APPEAL BOARD RULES, r. 2(f)(iii) - HINDU ADOPTIONS AND MAINTENANCE ACT OF 1956, ss. 10(iv), 16 - ADOPTION ACT, R.S.B.C. 1960, c. 4, s. 11.

1.21 Marie Ange Alice Chahal v. M.E.I.

SPONSORSHIP - SECOND MARRIAGE IN CANADA - PRESUMPTION OF VALIDITY - BURDEN OF PROOF - QUEBEC CIVIL CODE, ARTS. 42, 159, 1208 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

1.22 Evangelia Tzoidis v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - TRANSITIONAL - MARRIAGE OF CONVENIENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), (t), 7(1)(c), 22, 46(f) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, s. 4 - IMMIGRATION REGULATIONS, PART I, s. 28(1).

1.23 Pearl Yvonne Ward v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF THEFT - TRANSITIONAL HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - REHABILITATION OF THE SPONSOREE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-2, ss. 5(d), 7(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, s. 4.

1.24 Rhonda Leslie Enem v. M.E.I.

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - DENIAL OF MINISTER'S CONSENT NOT SIGNED BY MINISTER - VALIDITY - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 35, 60, 67 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 57(1), 118(1), 123.

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - MINISTER'S CONSENT DENIED - SPONSOREE NOT SEEKING PERMANENT RESIDENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3).

1.25 Suey Ping Mak v. M.E.I.

SPONSORSHIP - FAMILY RELATIONSHIP - PROOF - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION REGULATIONS, PART I, ss. 31(1)(c), 36 - IMMIGRATION REGULATIONS, 1978, s. 4 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3).

1.26 Charan Singh Aujla v. M.E.I.

SPONSORSHIP - IDENTITY OF SPONSOREES - PROOF OF RELATIONSHIP - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3) - IMMIGRATION REGULATIONS, 1978, s. 6(1)(a).

1.27 Grace Marie Castro Villagomez v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 7(1)(b), 18(1)(e)(vi), (2), 25, 30 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

1.28 Margaret Colleton v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d).

1.29 Kathleen May Fahel v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED - CRIME INVOLVING MORAL TURPITUDE - VOLUNTARY DEPARTURE - MINISTER'S CONSENT - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 18(1)(d), 35 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 19(1)(i), 57(1), 79, 125(3).

CRIMINAL CONVICTION - PERIOD OF REHABILITATION - WHEN SENTENCE TERMINATES - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 19(1)(c) - CRIMINAL CODE, ss. 601, 663(1)(b).

EVIDENCE - ADMISSIBILITY OF TAPE RECORDING - PREREQUISITES.

1.30 Jagdish Singh v. M.E.I.

SPONSORSHIP - RELATIONSHIP BETWEEN THE SPONSOR AND THE SPONSOREE - CHANGE OF NAME IN ACCORDANCE WITH INDIAN CUSTOM - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

1.31 Jalaur Singh Sidhu v. M.E.I.

SPONSORSHIP - POLYGAMOUS MARRIAGE - LEGITIMACY OF CHILDREN - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

1.32 Rise Diane Barrows v. M.E.I.

SPONSORSHIP - CRIMINAL CONVICTIONS OF SPONSOREE - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79(2)(b).

1.33 Nasib Kaur Grewal v. M.E.I.

SPONSORSHIP - AGE OF PARENTS - INCLUSION OF SIBLINGS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3) - IMMIGRATION REGULATIONS, PART I, s. 31(1)(d) - IMMIGRATION REGULATIONS, 1978, ss. 4(c), 6(1).

REFUGEE CLAIMS

1.34 Daniel Eduardo Orellana-Fernandois v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - CREDIBILITY - DECEITFUL INTENT OF REMAINING PERMANENTLY IN CANADA - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(2), 14 - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

1.35 Pablo Eric Diocaretz Urrutia v. M.E.I.

REFUGEE CLAIM - APPEAL FROM DEPORTATION ORDER ALLOWED TO PROCEED - INTERVENING PROCLAMATION OF IMMIGRATION ACT, 1976 - TRANSITIONAL - JURISDICTION OF BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(3), 14, 15.

REFUGEE CLAIM - PERSECUTION FOR POLITICAL OPINION - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1(a)(2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 14, 15.

1.36 Ismail Sabry v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - INSUFFICIENT DETAILS IN THE DECLARATION - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(1)(c), (2), (3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 28(1).

1.37 Manuel Eduardo Riveros-Melo v. M.E.I.

REFUGEE CLAIM - APPLICANT'S FATHER A MEMBER OF A POLITICAL PARTY - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 2(1), (2), 70, 71(1).

1.38 Mario Alcides Nerio-Ferman and Maria Irma Sanchez de Nerio v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - PHYSICALLY DEPORTED FROM CANADA - SUBSEQUENT RETURN TO HOME COUNTRY WITHOUT DIFFICULTY - TRANSITIONAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.A.C. 1970, c. I2, ss. 5(t), 35 - IMMIGRATION REGULATIONS, PART I, s. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(2), 14, 15.

1.39 Godfrey Mutyaba Mutebi-Gitta v. M.E.I.

REFUGEE CLAIM - MEMBERSHIP OF SOCIAL GROUP - PROTECTION GRANTED BY ANOTHER COUNTRY - WHETHER CANADA MUST ACCEPT HIM AS REFUGEE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(vvi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 15 - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

EVIDENCE

1.40 Jaswant Singh Lit v. M.M.I.

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF THE ADOPTION - INDIAN CUSTOMARY ADOPTION - BURDEN OF PROOF.

EVIDENCE - FOREIGN LAW - FOREIGN STATUTE REFERRED TO BY BOTH PARTIES - CONTRADICTIONS IN EXPERTS' INTERPRETATION.

SPONSORSHIP - FOREIGN ADOPTION - TRANSITIONAL - SPONSOREE WITHIN SPONSORABLE CLASS PURSUANT TO IMMIGRATION REGULATIONS, PART I - NO LONGER SPONSORABLE PURSUANT TO IMMIGRATION REGULATIONS, 1978 - VESTED RIGHTS - INTERPRETATION ACT, R.S.C. 1970, c. I-23, s. 35(3) - IMMIGRATION REGULATIONS, PART I, s. 31(1)(f) - HINDU ADOPTIONS AND MAINTENANCE ACT OF 1956, ss. 10(iv), 16.

SELECTED CASES DEALT WITH BEFORE APRIL 10th, 1978

**1.1 Vukasin Mitrovic v. M.M.I.**

DEPORTATION ORDER - PERSON ENTERING CANADA WITH A VISA - VALIDITY OF VISA AFTER STATUS GRANTED - RIGHT OF APPEAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 11(1)(b) - IMMIGRATION REGULATIONS, PART I, ss. 2, 30.

DOUBLE APPEAL - REFUGEE CLAIM - RIGHT OF APPEAL PURSUANT TO s. 11(1)(b) OF THE IMMIGRATION APPEAL BOARD ACT - MEANING OF THE WORD "OR" IN s. 11 OF THE IMMIGRATION APPEAL BOARD ACT - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 7(3), 18, 18(1)(e)(iv), 18(1)(e)(viii), (2), 22 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(1)(c), (3).

The appellant filed two appeals with the Board. He filed a claim to refugee status and an appeal pursuant to section 11(1)(b) of the Immigration Appeal Board Act since when he arrived in Canada he was in possession of a non-immigrant visa.

**Coram:** J.V. Scott (Chairman), J.-P. Houle, G. Legaré **Appeal heard:** in Montreal, January 7, 1977 **Judgment pronounced:** January 7, 1977 **Reasons by:** J.V. Scott (7 pp.), concurred in by J.-P. Houle and G. Legaré **Language of reasons:** available in English and French **Docket no.:** 76-1155 **Counsel:** S. Schachter, Barrister and Solicitor for the appellant; B.K. Turzanski, Esq., for the respondent.

**Held** (3-0) Claim to refugee status refused to proceed. As for the appeal pursuant to section 11(1)(b) of the Immigration Appeal Board Act, the appellant has no right of appeal to this Court since he has no longer a "valid" visa for the purpose of section 11(1)(b), the date of expiry of a visa simply indicates that it cannot be presented as a documentary prerequisite for admission after that date. It does not give a status and once status is granted the visa falls to the ground. The subsections of section 11(1) are mutually exclusive. There is no "double" appeal and an examination of the section as a whole leaves no doubt that the word "or" makes the alternative applicable between all categories. M.M.I. v. Diaz-Fuentes (1974) 2 F.C. 331; Lugano v. M.M.I. (1976) 2 F.C. 438; Maslej, Anna v. M.M.I. (F.C.A., no. 76-A-305), Urie, Ryan, MacKay, 30th April 1976 (not yet reported); Okolapka, Emmanuel v. M.M.I. (F.C.T.D., no. T-3116-76), Walsh, 21st September 1976 (not yet reported).

**1.2 Dieter Vogel v. M.E.I.**

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - STOLEN PASSPORT - PASSPORT AN ACT OF STATE - CAN IT BE QUESTIONED? - IMPROPER MEANS - MEANING OF "IMPROPER MEANS" USED IN s. 18(1)(e)(viii) OF THE IMMIGRATION ACT - MENS REA - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2), 25, 26(3).

BIAS ON THE PART OF THE SPECIAL INQUIRY OFFICER

The appellant entered Canada with a German passport accompanied by his wife and children and was given landed immigrant status. He was ordered deported pursuant to section 18(1)(e)(viii) of the Immigration Act because he had been admitted to Canada on the basis of a purportedly stolen passport. The appellant allegedly did not know it was stolen.

The appellant argued that the whole pattern of the conduct by the Special Inquiry Officer as shown in the minutes of the inquiry raised an apprehension of bias on the part of the officer in that he set the bond at \$5,000. and he failed to make the warrant of arrest an exhibit to the inquiry proceedings.

**Coram:** C.M. Campbell (Vice-Chairman), J.C.A. Campbell, J. Steele **Appeal heard:** in Vancouver, July 15, 1977 **Judgment pronounced:** September 23, 1977 **Reasons by:** C.M. Campbell (13 pp.), concurred in by J.C.A. Campbell, J. Steele **Language of reasons:** available in English and French **Docket no.:** 77-6014 **Counsel:** P.R. Cantillon and G.M. Evans, Barristers and Solicitors, for the appellant; C.H. McLean, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, order of deportation directed to be executed as soon as practicable, no grounds for granting special relief on compassionate or humanitarian considerations. The Minister sufficiently proved that the passport used by the appellant to gain admission into Canada was not officially issued, but was stolen. Mens rea is not an element to be proved in a deportation order made pursuant to section 18(1)(e)(viii).

Held also on the evidence that the Board could not find bias or grounds for reasonable apprehension of bias on the part of the Special Inquiry Officer. Gur v. M.M.I. 1 I.A.C. 384; Treffeisen v. M.M.I. 8 I.A.C. 69; M.M.I. v. Brooks 36 D.L.R. (3d) 522.

1.3 Mian Mohammad Khurshid Alam v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - IMPROPERLY ISSUED DOCUMENT PERTAINING TO ADMISSION - FORGED SIGNATURE OF VISA OFFICER - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2).

The appellant was admitted to Canada as a permanent resident, being in possession of an immigrant visa subsequently found to have the same number as someone else's visa. It was proved at the hearing of the appeal that the visa officer's signature on the appellant's visa was a forgery. The appellant also admitted paying for the visa after he obtained it.

Coram: J.V. Scott (Chairman), R. Tremblay, J.-P. Houle Appeal heard: in Montreal, January 11, 1978 Judgment pronounced: February 9, 1978 Reasons by: J.V. Scott (8 pp.), concurred in by R. Tremblay and J.-P. Houle Language of reasons: available in English and French Docket no.: 77-1058 Counsel: P. Duquette, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

Held (3-0) Appeal dismissed and execution of the deportation order directed. Although the visa officer's testimony was based on examination of the only available document, namely a photograph of a microfilm of the appellant's visa, the evidence as a whole satisfies the burden of proof lying on the respondent that the appellant was admitted to Canada with an improperly issued document.

1.4 Gwat Yin Chan v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - APPLICATION FOR PERMANENT RESIDENCE SHOWING MARITAL STATUS AS SINGLE - BURMESE AFFIDAVIT OF MARRIAGE - NO COHABITATION - WHETHER MARRIAGE VALID BY LAW OF BURMA - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(viii), (2).

The appellant, before coming to Canada completed an affidavit of marriage, although she declared herself as single in her application for permanent residence. At the hearing there was evidence to the effect that by Burmese law an affidavit of marriage was merely an intention to marry and if not coupled with cohabitation it is not considered a marriage.

Coram: A.B. Weselak (Vice-Chairman), D. Petrie, J.E.G. Steele Appeal heard: in Toronto, February 23, 1978 Judgment pronounced: February 23, 1978 Reasons by: A.B. Weselak (4 pp.), concurred in by D. Petrie and J.E.G. Steele Language of reasons: available in English and French Docket no.: 77-9435 Counsel: T. Chen, Barrister and Solicitor, for the appellant; W. Bernhardt, Esq., for the respondent.

Held (3-0) Appeal allowed. While there was an intent to become husband and wife, there is no evidence of record indicating that this was followed by cohabitation or the further intention of creating marriage between the appellant and her fiancé.

1.5 Edith De Rojas v. M.M.I.

SPONSORSHIP - NO REASON FOR THE REFUSAL IN THE LETTER - PURPOSE OF s. 19(2) OF THE IMMIGRATION APPEAL BOARD ACT - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 17, 19(2) - IMMIGRATION APPEAL BOARD RULES, r. 6(3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d).

The appellant filed an application to sponsor her husband into Canada but the sponsorship was refused giving no grounds on which the refusal was based. There was a subsequent reply by the respondent giving obscure reference to one ground of refusal in that the sponsoree was a member of the prohibited class of persons described in section 5(d) of the Immigration Act, without specifying the name of the prohibition.

Coram: J.V. Scott (Chairman), J.-P. Houle, G. Legaré Appeal heard: in Montreal, November 8, 1976 Judgment pronounced: November 8, 1976 Reasons by: J.V. Scott (5 pp.), concurred in by J.-P. Houle and G. Legaré Language of reasons: available in English and French Docket no.: 76-1102 Counsel: R. St-Louis, Esq., for the respondent.

Held (3-0) Application approved on equitable grounds. The purpose of section 19(2) of the Immigration Appeal Board Act is clearly to enable an appellant to know the case he has to meet and this is particularly important in appeals pursuant to section 17, the reasons for the refusal must be given and they must be given in intelligible terms. However, the appellant was aware that her husband had been convicted of a crime in Canada. The appellant was the victim of the folly of her husband in failing to advise her, before marriage, of his lack of legal status in this country. She married in good faith, and the marriage is clearly a viable relationship. Samejima v. The King (1932) S.C.R. 640; Mah v. M.M.I. 2 I.A.C. 367; Corey, Sarah Louise v. M.M.I. (I.A.B. 75-10046), Weselak, Benedetti, Petrie, 14th July 1975 (not yet reported).

1.6 Susie Young v. M.M.I.

SPONSORSHIP - JURISDICTION OF THE BOARD - SPONSOR RESIDING OUTSIDE CANADA - RIGHT TO SPONSOR - INTENTION TO ABANDON HER CANADIAN RESIDENCE - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 22 - IMMIGRATION REGULATIONS, PART I, s. 33.

The appellant while in Australia filed an application to sponsor her husband for admission to Canada.

**Coram:** A.B. Weselak (Vice-Chairman), J.E.G. Steele, H.B. Jaskula **Appeal heard:** in Toronto, May 26, 1977 **Judgment pronounced:** May 26, 1977 **Reasons by:** A.B. Weselak (3 pp.), concurred in by J.E.G. Steele, H.B. Jaskula **Language of reasons:** available in English and French **Docket no.:** 76-9298 **Counsel:** S.E. Long, Barrister and Solicitor, for the appellant; L. Ross, Esq., for the respondent.

**Held** (3-0) Application approved. The sponsor had not lost her Canadian residence at the time of the filing of her application, the only reason the sponsor went to Australia was to further her sponsorship application of her husband to be admitted in Canada and that at no time during which she was in Australia did she intend to stay there. Apart from the fact that the sponsoree had previous convictions he is a man of good character, gainfully employed, his marriage appears to be a valid and viable one and the offences of which he has been convicted are of a minor nature when penalties inflicted upon him by the Courts are considered.

1.7 Jagdish Kaur Bharaj v. M.M.I.

SPONSORSHIP - FAMILY CLASS - HALF-BROTHERS ISSUE OF FATHER'S POLYGAMOUS MARRIAGE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION REGULATIONS, PART I, ss. 2(aab), 2(d)(i), 31(1)(d).

The application for sponsorship for the admission of the applicant's parents included two half-brothers of the applicant, sons of her father by a second polygamous marriage.

**Coram:** J.C.A. Campbell, F. Glogowski, J.E.G. Steele **Appeal heard:** in Winnipeg, July 7, 1977 **Judgment pronounced:** August 23, 1977 **Reasons by:** J.E.G. Steele (6 pp.), concurred in by J.C.A. Campbell and F. Glogowski **Language of reasons:** available in English and French **Docket no.:** 77-3000 **Counsel:** J.S. Gill, Barrister and Solicitor for the appellant; A. Kirney, Esq., for the respondent.

**Held** (3-0) Application for sponsorship in respect of the half-brothers refused. Although legitimate by the law of India the brothers would not be considered legitimate by the law of any province of Canada. They are not therefore within the sponsorable family class.

1.8 Chantal Sylvie Ajah v. M.E.I.

SPONSORSHIP - VALIDITY OF CANADIAN MARRIAGE - ALLEGATION OF BIGAMY - BURDEN OF PROOF - PRESUMPTION OF VALIDITY OF FOREIGN MARRIAGE - FOREIGN LAW - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 7(1)(f) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - MARRIAGE ACT, R.S.O. 1970, c. 261, s. 46.

SPONSORSHIP - TERMS OF REFUSAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

The sponsor and her husband, the subject of the sponsorship application, were married in Ontario. The sponsorship application was refused on the ground that the husband was still married to his Nigerian wife, whom he had claimed as a wife on his application for a visa to come as a student to Canada. He denied that he had ever been married in Nigeria, admitting only that their relationship was one of "common law".

The expression "the application cannot be accepted" is a refusal within the meaning of section 17 of the Immigration Appeal Board Act (repealed). *Cerroni v. M.M.I.* 11 I.A.C. 340.

**Coram:** J.V. Scott (Chairman), F. Glogowsky, J.C.A. Campbell **Appeal heard:** in Ottawa, November 30, 1977 **Judgment pronounced:** November 30, 1977 **Reasons by:** J.V. Scott (8 pp.), concurred in by F. Glogowsky and J.C.A. Campbell **Language of reasons:** available in English and French **Docket no.:** 77-3076 **Counsel:** A.L. Morrison, Barrister and Solicitor, for the appellant; A.L. Kirney, Esq., for the respondent.

**Held** (3-0) Sponsorship application approved. The marriage in Ontario raises a presumption of validity, thus shifting the burden of proof of non-validity to the respondent. No evidence was adduced to prove the law of Nigeria either as to a customary marriage there or as to the existence there of a presumption of validity based on cohabitation. In re Shephard, George v. Thyer (1904) 1 Ch. 456; Aronegary v. Vaigalie (1881) 6 App. Cas. 364; Nom v. You (1934) 3 W.W.R. 686 (B.C.S.C.); Lewkowicz v. Korzewich (1956) S.C.R. 170; Sedgewich v. Sedgewich (1953) 9 W.W.R. (N.S.) 704 (Sask. Q.B.) 10.

#### 1.9 Gurmukh Singh Gill v. M.E.I.

SPONSORSHIP - POLYGAMOUS MARRIAGE - SPONSOR SON OF SECOND WIFE - WHETHER FATHER SPONSORABLE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, ss. 2(d)(i), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

The sponsor made an application to sponsor his mother, brothers, sister and father. The refusal of the sponsorship refers to the relationship between the son and father. The son, the sponsor is the issue of a polygamous marriage entered into according to Indian custom.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, J.C.A. Campbell **Appeal heard:** in Vancouver, February 1, 1978 **Judgment pronounced:** February 24, 1978 **Reasons by:** C.M. Campbell (4 pp.), concurred in by F. Glogowski, J.C.A. Campbell **Language of reasons:** available in English and French **Docket no.:** 77-6057 **Counsel:** M.R. Elson, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

**Held** (3-0) Application refused. The relationship necessary to make a sponsorship application does not exist between the appellant and his father since by Canadian law, a child, issue of a polygamous marriage, is not legitimate. Yew v. Attorney-General of British Columbia (1924) 1 D.L.R. 1166; Re Leong Ba Chai 1953 2 D.L.R. 766; Immigration Act and Bains (1955) 1 D.L.R. 78; Gill, Jagpal Singh v. M.E.I. (I.A.B. V77-6043), Campbell, Glogowski, Campbell, 1st March 1978 (not yet reported.)

#### 1.10 Jagpal Singh Gill v. M.E.I.

SPONSORSHIP - SPONSOR SON OF SECOND WIFE - WHETHER FATHER SPONSORABLE - FOREIGN CUSTOMARY MARRIAGE AND CUSTOMARY DIVORCE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, ss. 2(c), 2(d)(i), 2(i), 31(1)(d), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17.

The appellant made an application to sponsor his father, mother and sisters into Canada. The application in respect of the father was refused in that the relationship between him and the sponsor has not been established. The appellant was issue of his father's second marriage.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, J.C.A. Campbell **Appeal heard:** in Vancouver January 25, 1978 **Judgment pronounced:** March 1, 1978 **Reasons by:** C.M. Campbell (5 pp.), concurred in by F. Glogowski and J.C.A. Campbell **Language of reasons:** available in English and French **Docket no.:** 77-6043 **Counsel:** M.R. Elson, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

**Held** (3-0) Application approved. The evidence showed that the appellant's father was in fact divorced by Indian custom from his first wife and that in taking the appellant's mother as his wife, he was in fact married by Indian custom and further that under the Hindu Marriage Act, both the divorce and the marriage have legal status. This foreign law having been proved, the appellant is legitimate by Canadian law and has the right to sponsor his father.

1.11 Juan Alejandro Araya Heredio v. M.M.I.

REFUGEE CLAIM - HUSBAND AND WIFE - HUSBAND HARASSED - FIRST CLAIM TO REFUGEE STATUS MADE IN CANADA THOUGH OTHER COUNTRIES VISITED - WIFE THREATENED WITH RAPE - FAMILY UNIT - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(t), 34(1) - IMMIGRATION REGULATIONS, PART I, s. 28(1) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant husband, a Chilean, supported Allende. After the fall of Allende, he suffered harassment and left Chile, visiting Brazil and Spain. He subsequently returned to Chile. During his absence, his wife was questioned as to the whereabouts and was threatened with rape if she did not disclose them. Both husband and wife obtained Chilean passports without difficulty and came to Canada, where the husband made his first claim to refugee status, although he had previously visited other countries.

Coram: J.-P. Houle (Vice-Chairman), G. Legaré, R. Tremblay Appeal heard: in Montreal, January 5, 1977 Judgment pronounced: January 6, 1977 Reasons by: J.-P. Houle (9 pp.), concurred in by G. Legaré and R. Tremblay Language of reasons: available in English and French Docket no.: 76-1127 Counsel: G. Roy, Esq., for the appellant; M.A. Kulba, Esq., for the respondent.

Held (3-0) Appeals dismissed, deportation order quashed and grant of landing directed. The wife is a refugee protected by the Convention: threats which are degrading constitute an attack on moral integrity which can amount to persecution. The fact that the husband visited other countries without making a claim to refugee status does not necessarily deprive him of the protection of the Convention. Harassment for political opinions, though not amounting to torture, may amount to persecution. "Political opinions" may include allegiance to a prior regime. Although the husband's position as a refugee was not clearly determined, his situation as a member of a family unit warranted special relief.

1.12 Jose Manuel Duarte Inoque v. M.M.I.

REFUGEE CLAIM - MEMBER OF PARTICULAR GROUP - EMPLOYEE OF SECRET POLICE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(t), 7(1)(c), 22 - IMMIGRATION REGULATIONS, PART I, ss. 28(1), 34(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 14, 15.

The appellant first arrived in Canada as a visitor and upon expiry of his status claimed refugee status. He is a citizen of Portugal and while living there he was an employee of a secret police organization set up by the Government known as "PIDE". After the coup in 1974, the appellant was victim of harassment; he was arrested and remained in prison for 15 months during which time he was never charged, nor were formal charges laid against him within his knowledge. He also suffered maltreatment while in prison.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Kingston, February 8, 1977 Judgment pronounced: February 8, 1977 Reasons by: A.B. Weselak (5 pp.), concurred in by U. Benedetti and D. Petrie Language of reasons: available in English and French Docket no.: 76-9473 Counsel: M.M. Green, Barrister and Solicitor, for the appellant; M. Bhabha, Esq., for the respondent.

Held (3-0) Appeal dismissed, order of deportation quashed and landing directed. The appellant has a well-founded fear of being persecuted for reasons of membership of a particular group and being held in prison for a period of up to two years without formal charges, being denied the assistance of counsel, and receiving special oppressive treatment while in prison, merely because he was employee or member of the group known as PIDE, is tantamount to persecution.

1.13 Teum Mehamed Abubeker v. M.M.I.

REFUGEE CLAIM - CHANGE IN CONDITIONS IN HOME COUNTRY - REFUGEE SUR PLACE - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(x), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant, a citizen of Ethiopia by birth in Eritrea was a seaman for nine years. Before his arrival in Canada in 1976, he had visited many Mediterranean and Northern European ports, and had his home base in Athens. He claimed to be refugee for the first time after his arrival in Canada.

Coram: C.M. Campbell (Vice-Chairman), J.C.A. Campbell, J.E.G. Steele  
in Vancouver, July 14, 1977 Judgment pronounced: August 26, 1977  
C.M. Campbell (7 pp.), concurred in by J.C.A. Campbell, J.E.G. Steele  
the reasons: available in English and French Docket no.: 76-6125  
Rosenbloom, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent. Appeal heard:  
Reasons by:  
Language of  
Counsel: D.J.

Held (3-0) Appeal dismissed, deportation order quashed and grant of landing directed. The appellant proved that conditions had deteriorated in Eritrea immediately before his arrival in Canada thus bringing him within the definition of refugee sur place. Such a person may be outside his country who has not escaped illegally or left because of well-founded fear but who establishes a subsequent change in condition which gives rise to well-founded fear of persecution.

1.14 M.M.I. v. Zaheer Ali Manki

MOTION FOR REOPENING APPEAL - MINISTER'S MOTION - BOARD'S JURISDICTION TO REOPEN THE HEARING - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 15, 17 - IMMIGRATION REGULATIONS, PART I, ss. 28(1), 31.

Coram: C.M. Campbell (Vice-Chairman), R. Tremblay, G. Legaré  
Vancouver, December 6, 1976 Judgment pronounced: February 25, 1977  
G. Legaré (12 pp.), concurred in by C.M. Campbell and R. Tremblay  
reasons: available in English and French Docket no.: 74-7090  
Barrister and Solicitor, for the appellant, C. McLean, Esq., for the respondent. Appeal heard: in  
Reasons by:  
Language of  
Counsel: I. Sara,

Held (3-0) Motion allowed. New evidence has been adduced and accepted by both parties and considering the attitude shown by the applicant with respect to the sponsor and sponsored person, the Court is of the opinion that it has jurisdiction since reopening the appeal is necessary to resolve a complex situation. Grillas v. M.M.I. (1972) S.C.R. 577, 23 D.L.R. (3d) 1; Re Lornex Mining Corporation Ltd. (1976) 5 W.W.R. 554, 69 D.L.R. (3d) 705; Chan v. M.M.I. 6 I.A.C. 429; Wynder, Howard Joseph v. M.M.I. (F.C.A., no. A-165-75), Jackett, 24th June 1975 (not yet reported).

1.15 Eric Byron Douglas v. M.M.I.

MOTION FOR REOPENING APPEAL - DISTINGUISHED FROM REHEARING - MOTION ASKING BOARD TO CORRECT ALLEGED ERROR IN PRIOR HEARING - NATURAL JUSTICE - JURISDICTION - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 15.

The applicant alleges that the refusal of the adjournment by the Board at the hearing of his appeal without giving an opportunity for further submissions, was a denial of natural justice, and moved that the Board strike out its decision on appeal on the ground that the applicant was denied a full and proper hearing at his original appeal.

Coram: J.V. Scott (Chairman), G. Legaré, F. Glogowski  
October 14, 1977 Judgment pronounced October 14, 1977  
J.V. Scott (5 pp.), concurred in by G. Legaré, F. Glogowski  
English and French Docket no.: 73-22334  
Solicitor, for the applicant; W.L. Bernhardt, Esq., for the respondent. Appeal heard: in Ottawa,  
Reasons by: J.V. Scott (5  
Language of reasons: available in

Held (3-0) Motion dismissed for want of jurisdiction. The power to reopen an appeal is confined to the Board's jurisdiction under section 15 of the Immigration Appeal Board Act and must be based on new and cogent evidence. The power to rehear an appeal refers to the full appeal, legal and equitable, and derives not from the Board's "continuing jurisdiction" under section 15, but from its inherent jurisdiction to insure that justice is done, i.e. it is a power based purely on the principle of natural justice, where an appellant was wholly deprived of the opportunity to be heard at an appeal. This is not the case here. The proper forum is the Federal Court of Appeal since the Board has no jurisdiction to act as an appellate tribunal in respect of its own decisions. S.28(1) Application allowed Federal Court. Grillas v. M.M.I. (1972) S.C.R. 577; Harding v. M.M.I. (1972) F.C. 1153; Hasanagic v. M.M.I. 10 I.A.C. 10; Tsantili v. M.M.I. 6 I.A.C. 80; Caudill v. M.M.I. 6 I.A.C. 240.

1.16 Orazio Cardoni v. M.E.I.

MOTION FOR REOPENING APPEAL - JURISDICTION - APPEAL HEARD IN 1966 BY FORMER IMMIGRATION APPEAL BOARD - IMMIGRATION APPEAL BOARD ACT, S.C. 1966-67, c. 90, ss. 1, 33 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3 - AN ACT RESPECTING THE REVISED STATUTES OF CANADA, R.S.C. 1970, c. 48, s. 9.

The applicant, a landed immigrant was ordered deported and appealed to the former Immigration Appeal Board. His appeal was dismissed in 1966.

Coram: A.B. Weselak (Vice-Chairman), D. Petrie, H.B. Jaskula Appeal heard: in Toronto, February 20, 1978 Judgment pronounced: March 6, 1978 Reasons by: A.B. Weselak (6 pp.), concurred in by D. Petrie and H.B. Jaskula Language of reasons: available in English and French Docket no.: 77-9453 Counsel: J.N. Ormston, Esq., for the appellant; M. Bhabha, Esq., for the respondent.

Held (3-0) Motion dismissed for want of jurisdiction. Section 33 of the Immigration Appeal Board Act, 1966-67 is not repealed by the failure to reproduce it in R.S.C. c. I-3. The applicant however does not fall with the section, since he did appeal to the former Board. Whether or not the Minister reviewed this decision is irrelevant since the existing Immigration Appeal Board is a creature of statute and its jurisdiction must be found within the four corners of its creating statute. There is nothing therein which transfer the former jurisdiction of the Minister to the Board and the Board cannot accept this jurisdiction by implication.

1.17 Dieter Vogel v. M.M.I.

EVIDENCE - ADMISSIBILITY OF THREE STATUTORY DECLARATIONS - IMMIGRATION APPEAL BOARD RULES, r. 12(1) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 26(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 7(2)(c), 14, 15.

This was a motion to deny the admission at the hearing of an appeal of three statutory declarations submitted by the respondent. The material covered by these declarations comes from officials of the Federal Republic of Germany and from a Canadian Immigration Officer in the form of a sworn statement. They all refer to the allegation of a stolen passport in the appellant's possession.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, U. Benedetti Appeal heard: in Vancouver, April 21, 1977 Judgment pronounced: May 18, 1977 Reasons by: C.M. Campbell (5 pp.), concurred in by F. Glogowski, U. Benedetti Language of the reasons: available in English and French Docket no.: 77-6014 Counsel: P.R. Cantillon and G.M. Evans, Barristers and Solicitors, for the applicant; C.H. McLean, Esq., for the respondent.

Held (3-0) Motion dismissed. The Board must pursuant to section 7(2)(c) of the Immigration Appeal Board Act receive such evidence as is relevant and admissible. The three statutory declarations are covered by this provision and must be given such weight and consideration as the Board considers appropriate. Attorney General of Canada and M.M.I. v. Jolly (1975) F.C. 216; Srivastava v. M.M.I. (1973) F.C. 138; Woods, Brian v. M.M.I. (I.A.B. 68-5329), Campbell, Glogowski, Byrne, 16th July, 1968 (not yet reported).

CASES DEALT WITH AFTER APRIL 10th, 1978

1.18 Beverley Campbell v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FAILURE TO DISCLOSE EXISTENCE OF MINOR CHILDREN WHEN APPLYING FOR ADMISSION - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 18(1)(e)(viii) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 27(1)(e), 125(3).

The appellant, a citizen of Jamaica, was admitted to Canada as a permanent resident in 1973 pursuant to an application made in 1972 in which she failed to disclose the existence of 3 children residing in Jamaica. She gave the reason that at that time she did not have custody of the children.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, May 2, 1978 Judgment pronounced: May 2, 1978 Reasons by: A.B. Weselak (5 pp.), concurred in by U. Benedetti and D. Petrie Language of reasons: available in English and French Docket no.: 77-9476 Counsel: W.R. Hare, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

Held (3-0) Appeal dismissed. The deportation order was in accordance both with section 18(1)(e)(viii) of the Immigration Act, 1952 and section 27(1)(e) of the Immigration Act, 1976. The law obliges an applicant for permanent residence to disclose the existence of minor children whether or not they are in the custody of or dependent on the applicant. No compelling grounds were shown to support the exercise of the Board's equitable jurisdiction. Headlam v. M.M.I. 11 I.A.C. 141; M.M.I. v. Brooks (1974) S.C.R. 850, 36 D.L.R. (3d) 522; Ebanks, Barbara Elinora v. M.M.I. (F.C.A., no. A-559-76), Jackett, Urie, MacKay, 11th January 1977 (not yet reported).

1.19 Rahila Yasmin Kham v. M.M.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - APPLICATION FOR PERMANENT RESIDENCE SHOWING STATUS AS SINGLE - VALIDITY OF A CUSTOMARY MUSLIM MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 2(1), 27(1)(e), 72(1), 125(3), 128 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 18(1)(e)(viii) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 11.

The appellant was included in the sponsorship of her father as an accompanying member of the immediate family and as such was granted Canadian permanent residence. Her original application for permanent residence in Canada showed her as single but apparently she was already married by the law and customs of Muslim marriage in Pakistan when she was admitted.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, May 4, 1978 Judgment pronounced: May 8, 1978 Reasons by: D. Petrie (6 pp.), concurred in by A.B. Weselak, U. Benedetti Language of reasons: available in English and French Docket no.: 78-9054 Counsel: Z. Haque, Barrister and Solicitor, for the appellant; M. Bhabha, Esq., for the respondent.

Held (3-0) Appeal allowed on equitable and compassionate considerations. The appellant was obliged, by law, to disclose her contract of marriage. The fact that she had no intent to deceive is irrelevant to the legality of the deportation order since intent is not an element of the section but is relevant to compassionate considerations. Furthermore, almost her whole family is in Canada. Khan, Safdar Abdullah v. M.M.I. (I.A.B. 76-9350), Weselak, Benedetti, Petrie, 9th March, 1977 (not yet reported); M.M.I. v. Brooks (1974) S.C.R. 850, 36 D.L.R. (3d) 522; Hilario, Mario Santiago v. M.M.I. (F.C.A., no. A-84-77), Heald, Urie, MacKay, 27th September, 1977 (not yet reported).

1.20 Jaswant Singh Lit v. M.M.I.

SPONSORSHIP - JURISDICTION OF BOARD TO SEND BACK FOR FURTHER CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 7(2), 17 - IMMIGRATION REGULATIONS, PART I, s. 31(1)(f) - IMMIGRATION APPEAL BOARD RULES, r. 2(f)(iii) - HINDU ADOPTIONS AND MAINTENANCE ACT OF 1956, ss. 10(iv), 16 - ADOPTION ACT, R.S.B.C. 1960, c. 4, s. 11.

The appellant filed an application to sponsor his adopted daughter into Canada, and the latter was refused on the ground inter alia, that the adoption did not comply with the Hindu Adoptions and Maintenance Act of 1956. The appellant has the burden of proof that his daughter was adopted under the laws of India or any political subdivision thereof so as to create a relationship of parent and child between him and her. There was an adoption deed produced at the hearing in which there is a description of the ceremony of adoption.

**Coram:** J.V. Scott (Chairman), U. Benedetti, G. Legaré **Appeal heard:** in Vancouver, April 8, 1976 **Judgment pronounced:** August 13, 1976 **Reasons by:** J.V. Scott (12 pp.), concurred in by U. Benedetti and G. Legaré **Language of reasons:** available in English and French **Docket no.:** 76-6003 **Counsel:** N.S. Gill, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

**Held** (3-0) Since the respondent improperly considered irrelevant matters in reaching its refusal, the matter was sent back to the respondent for re-examination of the sponsorship application, and for a report to the Board of the results of this examination. There is nothing in the case to indicate that the adoption was not perfectly *bona fide*. The appellant is entitled to a proper and unprejudiced examination of his sponsorship application and the appellant should have the opportunity to make such additional proof as he sees fit to make and the appropriate immigration officials should again examine his application in the proper manner. Wong, Do Lam v. M.M.I. (I.A.B. 71-2134), Scott, Houle, Legaré, 2nd October, 1972 (not yet reported); Jang, Shu Bor v. M.M.I. 2 I.A.C. 241; Re Luck's Settlement (1940) Ch. 864 (C.A.); Re Valentini's Settlement (1965) Ch. 831 (C.A.); R. v. Leong Ba Chai (1954) S.C.R. 10.

1.21 Marie Ange Alice Chahal v. M.E.I.

SPONSORSHIP - SECOND MARRIAGE IN CANADA - PRESUMPTION OF VALIDITY - BURDEN OF PROOF - QUEBEC CIVIL CODE, ARTS. 42, 159, 1208 - IMMIGRATION APPEAL BOARD ACT; R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

The appellant sponsored her husband, whom she married in Canada, for admission to Canada as a permanent resident. Her application was refused on the ground that her husband was still married to a wife in India.

**Coram:** J.-P. Houle (Vice-Chairman), G. Legaré, F. Glogowski **Appeal heard:** in Montreal, February 22, and April 19, 1978 **Judgment pronounced:** April 29, 1978 **Reasons by:** J.-P. Houle (3 pp.), concurred in by G. Legaré, F. Glogowski **Language of reasons:** available in English and French **Docket no.:** 77-1167 **Counsel:** H. Frumkin, Barrister and Solicitor, for the appellant; J. Pépin, Esq., for the respondent.

**Held** (3-0) Appeal allowed. The presumption and validity of a marriage entered into Canada imposes a burden of proving its invalidity on the person challenging its validity, and the respondent failed to discharge this burden.

1.22 Evangelia Tzoidis v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - TRANSITIONAL - MARRIAGE OF CONVENIENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), (t), 7(1)(c), 22, 46(f) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, s. 4 - IMMIGRATION REGULATIONS, PART I, s. 28(1).

The appellant filed an application for admission to Canada of her husband. The refusal of his application made before the proclamation of the Immigration Act, 1976 was based on the fact that he was convicted of crimes involving moral turpitude. The crimes involved brought him within the inadmissible class pursuant to section 19(1)(c) of the Immigration Act, 1976.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, April 26, 1978 **Judgment pronounced:** April 27, 1978 **Reasons by:** U. Benedetti (8 pp.), concurred in by C.M. Campbell and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 78-9071 **Counsel:** N.P. Kapelos, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

**Held** (3-0) Appeal dismissed. The refusal is in accordance with the law. Further, on the evidence, this is a flagrant circumvention of the Immigration laws on the part of the sponsoree; he is using the sponsor in order to remain in Canada.

1.23 Pearl Yvonne Ward v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF THEFT - TRANSITIONAL HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - REHABILITATION OF THE SPONSOREE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 1 - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 7(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3), 128 IMMIGRATION REGULATIONS, 1978, s. 4.

The appellant filed an application to sponsor her husband into Canada which application was refused on the basis that the sponsoree was a member of the prohibited class pursuant to section 5(d) of the Immigration Act.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, May 4, 1978 **Judgment pronounced:** May 8, 1978 **Reasons by:** A.B. Weselak (9 pp.), concurred in by U. Benedetti, D. Petrie **Language of reasons:** available in English and French **Docket no.:** 78-9022 **Counsel:** D.W. Blair, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

**Held** (3-0) Appeal allowed on compassionate grounds. Although, the sponsoree is a prohibited person under both the Immigration Act, 1952 and the Immigration Act, 1976, it is almost five years since the sponsoree committed his last offence and a span of five years is usually considered a suitable time for assessing the possible rehabilitation of a person with criminal offences and this time has practically elapsed. He appears to have stabilized himself by obtaining and retaining steady employment, his marriage has also had a stabilizing effect and it appears that he is well on his way to rehabilitation and his future prospects appear to be very good.

1.24 Rhonda Leslie Enem v. M.E.I.

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - DENIAL OF MINISTER'S CONSENT NOT SIGNED BY MINISTER - VALIDITY - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 35, 60, 67 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 57(1), 118(1), 123.

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - MINISTER'S CONSENT DENIED - SPONSOREE NOT SEEKING PERMANENT RESIDENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3).

The appellant sponsored her husband for permanent admission to Canada. Her application was refused on the ground that the husband had been deported from Canada and the Minister's consent to return was denied by the production of a valid document made in accordance with the Immigration Act and Regulations. On the evidence, the husband was not seeking permanent admission to Canada but simply wished to be free to visit from time to time.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, May 10, 1978 **Judgment pronounced:** May 10, 1978 **Reasons by:** A.B. Weselak (12 pp.), concurred in by U. Benedetti and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 77-9470 **Counsel:** S. Ramkissoon, Esq., for the appellant, L. Williams, Esq., for the respondent.

**Held** (3-0) Appeal dismissed. The husband's conduct while in Canada had indicated absolute disrespect for the law, furthermore, he is not seeking permanent admission to Canada and there is no evidence of hardship on the sponsor or her child. Belizaire v. M.M.I. 3 I.A.C. 419.

1.25 Suey Ping Mak v. M.E.I.

SPONSORSHIP - FAMILY RELATIONSHIP - PROOF - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION REGULATIONS, PART I, ss. 31(1)(c), 36 - IMMIGRATION REGULATIONS, 1978, s. 4 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3)

The appellant made an application for the admission to Canada, as sponsored dependents, of her daughter and her son. The ground for refusal of the sponsorship was that there was a lack of evidence of the family relationship between the sponsor and the sponsorees.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti **Appeal heard:** in Vancouver, April 13, and April 19, 1978 **Judgment pronounced:** May 10, 1978 **Reasons by:** U. Benedetti (10 pp.), concurred in by A.B. Weselak **Dissenting reasons:** C.M. Campbell (6 pp.) **Language of reasons:** available in English and French **Docket no.:** 77-6037 **Counsel:** J.R. Taylor, Barrister and Solicitor, D. Vick, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

**Held** (2-1) Appeal allowed. Although the appellant was untruthful with the Immigration office in 1959, she would not have hired three different counsel and spent a considerable amount of money in this matter if the two sponsorees were not her own children, and in considering that in China obtaining documentation is a difficult task, the appellant has presented the best evidence such as wedding photographs, income tax returns, last will and testament, insurance policy, school certificates, to show the relationship between herself and the two sponsorees, all these documents making reference to the children of the appellant.

1.26 Charan Singh Aujla v. M.E.I.

SPONSORSHIP - IDENTITY OF SPONSOREES - PROOF OF RELATIONSHIP - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3) - IMMIGRATION REGULATIONS, 1978, s. 6(1)(a).

The appellant sponsored his parents and two brothers for admission to Canada, the two brothers being under 21 and dependents of the parents. His application respecting his two brothers was refused on suspicion that they were not his brothers.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, May 11, 1978 Judgment pronounced: May 11, 1978 Reasons by: A.B. Weselak (6 pp.), concurred in by U. Benedetti and D. Petrie Language of reasons: available in English and French Docket no.: 77-9460 Counsel: L. Williams, Esq., for the respondent.

Held (3-0) Appeal allowed. On the evidence, including birth certificates, an affidavit of the father, school certificates, passports, and certification by the elders of the village, the Board was reasonably satisfied of the relationship.

1.27 Grace Marie Castro Villagomez v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 7(1)(h), 18(1)(e)(vi), (2), 25, 30 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

The appellant filed an application for the admission of her husband to Canada. It was refused on the ground that he had already been ordered deported, having overstayed the period for which he was originally admitted to Canada.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Vancouver, May 16, 1978 Judgment pronounced: May 31, 1978 Reasons by: C.M. Campbell (7 pp.), concurred in by F. Glogowski, R. Tremblay Language of reasons: available in English and French Docket no.: 78-6059 Counsel: C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal allowed. There are such humanitarian and compassionate considerations that warrant the granting of special relief in that the appellant was a very credible witness and that for her this has not been a marriage of convenience. Further there was nothing in the evidence of the sponsor to lead to believe otherwise so far as he is concerned.

1.28 Margaret Colleton v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 79, 125(3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d).

The appellant filed an application to sponsor her husband into Canada but the latter was refused because the sponsor was a member of the prohibited class of persons described in section 5(d) of the Immigration Act, 1952.

Coram: J.V. Scott (Chairman), F. Glogowski, R. Tremblay Appeal heard: in St-John (Newfoundland), May 8, 1978 Judgment pronounced: June 1st, 1978 Reasons by: R. Tremblay (4 pp.), concurred in by J.V. Scott and F. Glogowski Language of reasons: available in English and French Docket no.: 77-3059 Counsel: F. Bishop, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

Held (3-0) Appeal dismissed. The criminal offence for which the sponsor was convicted (manslaughter) is a crime involving moral turpitude and place him squarely within section 19(1)(c) of the Immigration Act, 1976.

1.29 Kathleen May Fahel v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED - CRIME INVOLVING MORAL TURPITUDE - VOLUNTARY DEPARTURE - MINISTER'S CONSENT - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(d), 18(1)(d), 35 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 19(1)(c), 19(1)(i), 57(1), 79, 125(3).

CRIMINAL CONVICTION - PERIOD OF REHABILITATION - WHEN SENTENCE TERMINATES - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 19(1)(c) - CRIMINAL CODE, ss. 601, 863(1)(b).

EVIDENCE - ADMISSIBILITY OF TAPE RECORDING - PREREQUISITES.

The appellant sponsored her husband for admission to Canada as a permanent resident. Her application was refused on the ground that the husband had been convicted of a crime involving moral turpitude, namely possession of a narcotic for the purpose of trafficking, and had been ordered deported, after which he had taken voluntary departure from Canada, and on the further ground that he did not have the Minister's consent to return.

The Immigration Act, 1976 was proclaimed in force after the refusal of the application but before the appeal was heard, and contains no provision respecting crime involving moral turpitude.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum Appeal heard: in Toronto, June 5, 1978 Judgment pronounced: June 6, 1978 Reasons by: A.B. Weselak (12 pp.), concurred in by U. Benedetti and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-9043 Counsel: D.M. Greenbaum, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

Held (3-0) Appeal allowed. The refusal is in accordance with the law. Pursuant to section 125(3) of the Immigration Act, 1976 the grounds of refusal must be looked at in the light of the new Act and both are found therein. However, on the evidence there were sufficient compassionate and humanitarian grounds to warrant special relief.

For the purpose of calculating the five year rehabilitation period provided for in section 19(1)(c) of the Immigration Act, 1976, a sentence terminates when any period of probation expires.

#### 1.30 Jagdish Singh v. M.E.I.

SPONSORSHIP - RELATIONSHIP BETWEEN THE SPONSOR AND THE SPONSOREE - CHANGE OF NAME IN ACCORDANCE WITH INDIAN CUSTOM - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

The appellant filed a sponsorship application for admission into Canada of his father and his sister. The ground of refusal with respect of his sister is her relationship and her age.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in Vancouver, June 13, 1978 Judgment pronounced: June 13, 1978 Reasons by: C.M. Campbell (3 pp.), concurred in by F. Glogowski and D. Petrie Language of reasons: available in English and French Docket no.: 78-6076 Counsel: M.D. Werier, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal allowed. On the evidence, the sister had changed her name after the death of her mother, this was done in a ceremony in accordance with Indian custom and she was found to be the same person as the one mentioned in the birth certificate filed with the application.

#### 1.31 Jalaur Singh Sidhu v. M.E.I.

SPONSORSHIP - POLYGAMOUS MARRIAGE - LEGITIMACY OF CHILDREN - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79.

The appellant filed a sponsorship application for admission into Canada of his father, step-mother, half-brothers and half-sister. The ground of refusal with respect to the mother and children is the lack of family relationship between the sponsor and the sponsorees since the mother was the wife of the father as a result of a polygamous marriage.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in Vancouver, June 12, 1978 Judgment pronounced: June 14, 1978 Reasons by: C.M. Campbell (3 pp.), concurred in by F. Glogowski and D. Petrie Language of reasons: available in English and French Docket no.: 78-6058 Counsel: E. Parfeniuk, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

**Held** (3-0) Appeal dismissed. The appellant's step-mother is not recognized as the wife of his father under the laws of any province of Canada and further the children included in the application do not possess the status of legitimacy had the father been domiciled in Canada at the time of their respective births.

**1.32 Rise Diane Barrows v. M.E.I.**

SPONSORSHIP - CRIMINAL CONVICTIONS OF SPONSOREE - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 79(2)(b).

The appellant sponsored her husband, a citizen of the United States, for admission to Canada. Admission was refused because the husband had been convicted of crimes which brought him within section 5(d) of the Immigration Act, 1952 (repealed).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie **Appeal heard:** in Vancouver, June 15, 1978 **Judgment pronounced:** June 19, 1978 **Reasons by:** C.M. Campbell (5 pp.), concurred in by F. Glogowski and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 78-6055 **Counsel:** P.F. Lasko, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

**Held** (3-0) Appeal allowed. A favorable probation report respecting the husband, the professional status of the appellant in Canada, the possibility of increased prejudice against the appellant and her daughter, who are black, if they had to establish themselves in the United States and the presence of the appellant's mother in Canada, give grounds for special relief.

**1.33 Nasib Kaur Grewal v. M.E.I.**

SPONSORSHIP - AGE OF PARENTS - INCLUSION OF SIBLINGS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 79, 125(3) - IMMIGRATION REGULATIONS, PART I, s. 31(1)(d) - IMMIGRATION REGULATIONS, 1978, ss. 4(c), 6(1).

The appellant sponsored her parents and her brother and sister, then both under 21, for admission to Canada as permanent residents. Her application was refused on the ground that she had failed to prove that her father was over sixty, as required by the Immigration Regulations, Part I, s. 31(1)(d).

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay, E. Teitelbaum **Appeal heard:** in Ottawa, July 12, 1978 **Judgment pronounced:** August 10, 1978 **Reasons by:** F. Glogowski (9 pp.), concurred in by R. Tremblay and E. Teitelbaum **Language of reasons:** available in English and French **Docket no.:** 77-3092 **Counsel:** S.M. Leikin, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

**Held** (3-0) Appeal allowed. The appellant as far as reasonably possible proved that her father was over sixty, and since the refusal was unfounded the whole family is admissible, notwithstanding the fact that the sibling is now over 21, and notwithstanding the promulgation of the Immigration Regulations, 1978 before the appeal was finally disposed of. Aujla, Charan Singh v. M.E.I. (I.A.B. 77-9460), Weselak, Benedetti, Petrie, 11th May, 1978 (not yet reported); Lit, Jaswant Singh v. M.E.I. (I.A.B. 76-6003), Scott, Benedetti, Legaré, 30th May, 1978 (not yet reported).

**1.34 Daniel Eduardo Orellana-Fernandois v. M.E.I.**

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - CREDIBILITY - DECEITFUL INTENT OF REMAINING PERMANENTLY IN CANADA - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(2), 14 - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant, a citizen of Chile, claims refugee status on the ground that he, when he was a student, was a member of the Socialist Party. As a result of this membership, he alleges that he has suffered several harassments and was even rejected from the University, having problems in finding employment.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti **Appeal heard:** in Vancouver, April 3, 1978 **Judgment pronounced:** April 5, 1978 **Reasons by:** C.M. Campbell (8 pp.), concurred in by A.B. Weselak, U. Benedetti **Language of reasons:** available in English and French **Docket no.:** 77-7014 **Counsel:** M. Smith, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal dismissed, execution of order of deportation directed. The appellant is not a refugee in accordance with the Convention, but has made a fraudulent attempt to gain landed immigrant status in Canada without submitting himself to the usual examination required of all other immigrant applicants.

1.35 Pablo Eric Diocaretz Urrutia v. M.E.I.

REFUGEE CLAIM - APPEAL FROM DEPORTATION ORDER ALLOWED TO PROCEED - INTERVENING PROCLAMATION OF IMMIGRATION ACT, 1976 - TRANSITIONAL - JURISDICTION OF BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, s. 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(3), 14, 15.

REFUGEE CLAIM - PERSECUTION FOR POLITICAL OPINION - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 14, 15.

The appellant was ordered deported on January 11, 1978 and filed an appeal pursuant to section 11(1)(c) of the Immigration Appeal Board Act (repealed). His appeal was allowed to proceed and was heard on April 12, 1978, two days after proclamation of the Immigration Act, 1976, which provides no machinery for an appeal from a deportation order by a person claiming refugee status.

The appellant, a Chilean, was an active supporter of the Allende régime both before and after the coup d'état. After the coup, he was jailed on numerous occasions and was unable to work at his profession.

Coram: J.-P. Houle (Vice-Chairman), G. Legaré, F. Glogowski Appeal heard: in Montreal, April 12, 1978 Judgment pronounced: April 12, 1978 Reasons by: F. Glogowski (7 pp.), concurred in by J.-P. Houle and G. Legaré Language of reasons: available in English and French Docket no.: 78-1014 Counsel: S. Bless, Barrister and Solicitor, for the appellant; J. Pépin, Esq., for the respondent.

Held (3-0) Although section 125(3) of the Immigration Act, 1976 is retrospective substantively as well as procedurally, in order to preserve the rights of the appellant to have his appeal dealt with, the Board will exercise its jurisdiction under section 14 and section 15 of the Immigration Appeal Board Act as if that Act had not been repealed.

Appeal dismissed, order of deportation quashed and landing directed. Although possibly not stricto sensu a political refugee as defined in the Convention, the appellant would suffer unusual hardship if returned to Chile. The Oglethorpe Victory (1059) 25 M.P.R. 22.

1.36 Ismail Sabry v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - INSUFFICIENT DETAILS IN THE DECLARATION - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(1)(c), (2), (3) - IMMIGRATION ACT, R.S.C. 1970, c. I-2, s. 5(t) - IMMIGRATION REGULATIONS, PART I, s. 28(1).

The appellant claimed refugee status on the basis that he was a member of a political and revolutionary party in Egypt that was hostile to the government. He alleges that after he left the country, the authorities went to his house, searched it and that he was subject to arrest.

Coram: J.-P. Houle (Vice-Chairman), G. Legaré, F. Glogowski Appeal heard: in Montreal, April 17, 1978 Judgment pronounced: April 17, 1978 Reasons by: F. Glogowski (2 pp.), concurred in by J.-P. Houle and G. Legaré Language of reasons: available in English and French Docket no.: 78-1049.

Held (3-0) Appeal refused to proceed and execution of the deportation order directed. There was no factual detail as to in what manner, and when the appellant was persecuted. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Glogowski, Houle, Legaré, 12th April, 1978 (not yet reported).

1.37 Manuel Eduardo Riveros-Melo v. M.E.I.

REFUGEE CLAIM - APPLICANT'S FATHER A MEMBER OF A POLITICAL PARTY - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 2(1), (2), 70, 71(1).

The applicant, a citizen of Chile based his refugee claim on political problems which his father had since September 1973. However, the applicant did not belong to any political party in Chile and was never arrested or persecuted, he was only questioned twice.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, May 10, 1978 **Judgment pronounced:** May 10, 1978 **Reasons by:** U. Benedetti (6 pp.), concurred in by A.B. Weselak and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 78-9122.

**Held** (3-0) Claim refused to proceed. The applicant is not a Convention refugee.

1.38 Mario Alcides Nerio-Ferman and Maria Irma Sanchez de Nerio v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - PHYSICALLY DEPORTED FROM CANADA - SUBSEQUENT RETURN TO HOME COUNTRY WITHOUT DIFFICULTY - TRANSITIONAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 5(t), 35 - IMMIGRATION REGULATIONS, PART I, s. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, ss. 11(2), 14, 15.

The male appellant claims refugee status because of his active membership in an union and revolutionary party. He was arrested, tortured and fired from his job. However, after his last arrest, he had untroubled years in his country where he was never harassed, mistreated or persecuted. After he came to Canada for the first time and was physically deported he had no trouble in being readmitted to his country of origin.

**Coram:** J.-P. Houle (Vice-Chairman), G. Legaré, R. Tremblay **Appeal heard:** in Montreal, May 23, 1978 **Judgment pronounced:** May 26, 1978 **Reasons by:** G. Legaré (3 pp.), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-1018 - 78-1018A **Counsel:** G. Sciortino, Barrister and Solicitor, for the appellants; J.R. St-Louis, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, order of deportation quashed and grant of landing directed. The appellants do not fall within the definition of the term "refugee" in the Convention. Despite some lack of consistency in the evidence, it was found that the deportation of the appellants and their children could expose them to unusual hardship.

1.39 Godfrey Mutyaba Mutebi-Gitta v. M.E.I.

REFUGEE CLAIM - MEMBERSHIP OF SOCIAL GROUP - PROTECTION GRANTED BY ANOTHER COUNTRY - WHETHER CANADA MUST ACCEPT HIM AS REFUGEE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, c. I-2, ss. 18(1)(e)(vi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, s. 15 - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant who claimed refugee status in Canada had already been granted protection by another country, signatory to the Convention (Kenya). Experts' evidence was that the appellant being a member of the Boganda tribe, an elite group in Uganda, might if returned to Kenya where he was registered as an alien, be kidnapped by Ugandans in that country.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie **Appeal heard:** in Vancouver, June 22, 1978 **Judgment pronounced:** June 22, 1978 **Reasons by:** C.M. Campbell (4 pp.), concurred in by F. Glogowski and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 78-6046 **Counsel:** C. Rigg, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, deportation order quashed, grant of landing directed. The appellant has established that in accordance with the United Nations Convention on Refugees that he has a well-founded fear of persecution should he be returned either to Uganda or to Kenya.

1.40 Jaswant Singh Lit v. M.M.I.

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF THE ADOPTION - INDIAN CUSTOMARY ADOPTION - BURDEN OF PROOF.

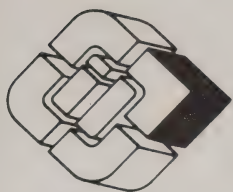
EVIDENCE - FOREIGN LAW - FOREIGN STATUTE REFERRED TO BY BOTH PARTIES - CONTRADICTIONS IN EXPERTS' INTERPRETATION.

SPONSORSHIP - FOREIGN ADOPTION - TRANSITIONAL - SPONSOREE WITHIN SPONSORABLE CLASS PURSUANT TO IMMIGRATION REGULATIONS, PART I - NO LONGER SPONSORABLE PURSUANT TO IMMIGRATION REGULATIONS, 1978 - VESTED RIGHTS - INTERPRETATION ACT, R.S.C. 1970, c. I-23, s. 35(3) - IMMIGRATION REGULATIONS, PART I, s. 31(1)(f) - HINDU ADOPTIONS AND MAINTENANCE ACT OF 1956, ss. 10(iv), 16.

The sponsor failed to produce any evidence whatsoever of a custom applicable to the parties concerned providing for the adoption of persons who have completed the age of fifteen years. The respondent contends that the purported adoption does not comply with the Hindu Adoptions and Maintenance Act. This Act was never proved by either party but was invoked by both. An adoption deed was produced which was never proved to have been duly registered, but was assumed by both parties. Since both parties relied on the same section of the foreign statute, but differed in its interpretation, the Court itself examined the statute and made its own interpretation.

Coram: J.V. Scott (Chairman), U. Benedetti, G. Legaré Appeal heard: in Vancouver, August 13, 1975 Judgment pronounced: May 30, 1978 Reasons by: J.V. Scott (3 pp.), concurred in by U. Benedetti and G. Legaré Language of reasons: available in both English and French Docket no.: 76-6003 Counsel: N.S. Gill, Barrister and Solicitor, for the appellant; R.N. Dewar, Esq., for the respondent.

Held (3-0) Application approved. Section 16 of the "Hindu Adoptions and Maintenance Act" establishes a presumption in favor of the validity of an adoption where the adoption deed is duly registered in accordance with its terms, thus shifting the burden of proof to the party contesting the adoption. It appears that only the appropriate Court in India could set aside an adoption registered as it is assumed this one was and since there is no evidence that any Indian Court was even asked to pronounce its validity, the instant adoption must be presumed to be valid in accordance with the Indian Law. Lyon v. Lyon (1959) O.R. 305.



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 2

Date April 25, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

2.7 Maria Teresa Greco v. M.E.I.

SPONSORSHIP - SECURITY CERTIFICATE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 79(3), 83(1), 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 21.

SECURITY CERTIFICATE - SPONSORSHIP - EFFECT OF S. 83 OF THE IMMIGRATION ACT, 1976.

2.8 Wladyslaw Poplawski v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - WITHDRAWAL OF SPONSORSHIP - DEPORTATION OF THE SPONSOREE - SECOND SPONSORSHIP APPLICATION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

2.9 Donna Marie Singh v. M.E.I.

SPONSORSHIP - BIGAMOUS MARRIAGE - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 128 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c), 7(3) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

2.10 Collyne Giwa-Salvador v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED ON ALLEGATION THAT HE WAS NOT FREE TO MARRY - MINISTER'S PERMIT - CANADIAN MARRIAGE VALID - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, SS. 28(1), 31 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(3) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

2.11 Evelyne Henriska v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - CASE DECIDED ON THE RECORD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD RULES, 1978, R. 31(3).

REFUGEES

2.12 Eduardo Estanislao Encina-Perez and wife Ester Del Carmen Gallardo Rojas De Encina v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - REFUGEE PROTECTED BY THE CONVENTION - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

2.13 Jose Sebastian Cartes Soto v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(vi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14, 15.

2.14 Maria Violetta Moyano Garay v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - SUBSEQUENT CHANGE IN GOVERNMENT - LOSS OF PROFESSIONAL POSITION - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14(b), 15(1), UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

2.15 Behirun Kidane v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - MEMBER OF AN ETHNIC GROUP - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(f), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15.

2.16 D'Artagnan Julio Avila Gallardo v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - MEMBER OF A POLITICAL PARTY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11(1)(c).

2.17 Jut Wong Cheung v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 11(2), (3) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

2.18 Angel Hernandez Magana and Digna Gloribel Lima De Hernandez v. M.E.I.

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70(1), 71(2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(c).

MOTIONS FOR REOPENING APPEAL

2.19 Bassam Adib El Charif v. M.E.I.

MOTION FOR REOPENING APPEAL - GROUNDS CONSTITUTING NEW EVIDENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 15.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD

2.20 Ramon De Jesus Escobar v. M.E.I.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD - REFUGEE CLAIMANT ORDERED DEPORTED - SECTION 22 REPORT MADE UNDER THE IMMIGRATION ACT, 1952 - INQUIRY HELD AFTER PROCLAMATION OF THE IMMIGRATION ACT, 1976 - INTERPRETATION OF S. 126(c) OF THE IMMIGRATION ACT, 1976 - VESTED RIGHTS OF APPEAL - RETROSPECTIVE EFFECT OF THE IMMIGRATION ACT, 1976 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1), (2)(d), 20(1)(a), 23(3)(c), 32(5)(b), 45, 46, 47, 48, 126(a), (c), 128(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), (2), (3).

## 2.1 Ranjit Singh Palak v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 72(1)(a), 75(1)(a).

The appellant was admitted to Canada as a permanent resident and left Canada for personal reasons only six weeks after his entering. He subsequently returned ten months after and was ordered deported on the ground that he had lost his permanent resident status.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie  
Judgment pronounced: June 22, 1978  
Reasons by: C.M. Campbell (3 pp.), concurred in by F. Glogowski and D. Petrie  
Language of reasons: available in English and French  
Docket no.: 78-6072  
Counsel: R.O. Rother, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds and order of deportation quashed. The appellant on achieving landed status in Canada, intended to make this country his home, he always intended to return and he did not lose his status as a landed immigrant.

## 2.2 Sahadeo Persaud v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - EVIDENCE - BURDEN OF PROOF - NON-DISCLOSURE OF PREVIOUS CONVICTIONS - TRANSITIONAL HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(d), 7(2), 18(1)(e)(iv), (viii), (2), 25 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 27(1)(a), (e), 72(1), 125(3), 128.

The appellant was ordered deported because he failed to disclose his previous criminal convictions when he was admitted as a permanent resident in Canada.

**Coram:** A.B. Weselak (Vice-Chairman), D. Petrie, R. Tremblay  
Judgment pronounced: August 23, 1978  
Reasons by: D. Petrie (8 pp.), concurred in by A.B. Weselak and R. Tremblay  
Language of reasons: available in English and French  
Docket no.: 78-9036  
Counsel: A. Mintz, Barrister and Solicitor, for the appellant; M. Bhabha, Esq., for the respondent.

**Held** (3-0) Appeal allowed on both legal and equitable grounds. The Department has not adequately proven that the certificate of conviction refers to the appellant, the similarity in data and the discrepancy in evidence given by the appellant is not sufficient to support the deportation order, and having regard to all the circumstances of the case, there are grounds for granting special relief. M.M.I. v. Brooks (1974) S.C.R. 850, 36 D.L.R. (3d) 522.

## 2.3 Kenneth Jimmy Webber v. M.E.I.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD - ADJUDICATOR FINDING PERSON NOT PERMANENT RESIDENT - REVIEW BY THE BOARD OF THE DECISION OF THE ADJUDICATOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1).

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE OF CANADA FOR MORE THAN 183 DAYS - NO RETURNING RESIDENT PERMIT - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN SECTION 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 4(1), 5(1), 8(1), (2), 9(1), 12(1), 14(1), 19(2)(d), 20(1), 24(2), 32(5)(b), 59(1).

The appellant was admitted as a permanent resident of Canada and left Canada for personal reasons remaining outside the country for more than 183 days. He returned without a permanent resident permit, and sought admission as a permanent resident.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum  
Judgment pronounced: June 14, 1978  
Reasons by: A.B. Weselak (15 pp.), concurred in by U. Benedetti and E. Teitelbaum  
Language of reasons: available in English and French  
Docket no.: 78-9125  
Counsel: E. Beckett, Esq., for the appellant; W.A. MacIntyre, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds and exclusion order quashed. The Board has jurisdiction to review the decision of the adjudicator under the provisions of section 24(2) of the Immigration Act, 1976 and consequently to decide the appeal pursuant to section 72(1) of the Immigration Act, 1976. On the evidence, the appellant did not intend to abandon his permanent resident status in Canada. The

presumption contained in section 24(2) of the Act, especially by the use of the word "deemed" is a rebuttable one, not an absolute one, so the onus is on the appellant to satisfy the Immigration Officer or the adjudicator, that he did not intend to abandon Canada as his place of permanent residence. R. v. Fraser (1911) 45 N.S.R. 218 (C.A.); Gana v. M.M.I. (1970) S.C.R. 699; Srivastava v. M.M.I. (1973) F.C. 138, 36 D.L.R. (3d) 688.

#### 2.4 Magdi Halim Alexander v. M.E.I.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD - ADJUDICATOR FINDING PERSON NOT PERMANENT RESIDENT - REVIEW BY THE BOARD OF THE DECISION OF THE ADJUDICATOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1).

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE OF CANADA FOR LESS THAN 183 DAYS - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c), 22, 28(1), 72(1)(a), 75(1)(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 9(1), 24(1), 32(5)(b).

The appellant was admitted to Canada as a permanent resident and left Canada for personal reasons. He subsequently returned and was ordered deported on the ground that he had lost his permanent resident status.

**Coram:** A.B. Weselak (Vice-Chairman), D. Petrie, E. Teitelbaum **Appeal heard:** in Toronto, July 18, 1978 **Judgment pronounced:** July 18, 1978 **Reasons by:** A.B. Weselak (8 pp.), concurred in by D. Petrie and E. Teitelbaum **Language of reasons:** available in English and French **Docket no.:** 78-9138 **Counsel:** A. Wood, Esq., for the appellant, W.A. MacIntyre, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds and exclusion order quashed. The whole of the decision of the adjudicator is subject to review and revision, the appellant may tender evidence before the Board which the Board must receive as long as it is relevant and admissible in relation not only to the merits of the appeal but also as to the question of its jurisdiction, the Board must consider both the evidence received at the inquiry and at the hearing of the appeal, assess and interpret this evidence as a whole, and reach a decision based on this evidence. The Board has jurisdiction to entertain the appeal pursuant to section 72(1) of the Immigration Act, 1976 since it finds on the evidence that the appellant who has been granted landed status has showed that he did not cease to be a permanent resident pursuant to section 24(1) of the Immigration Act, 1976, in that he did not have the intention of abandoning Canada as his place of residence. Bryce, Maurice Denzil v. M.E.I. (F.C.A., no. A-289-78), Pratte, Heald, Urie, 26th July 1978 (not yet reported); Inoue v. M.M.I. 11 I.A.C. 410; Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, 14th June 1978 (not yet reported); Gana v. M.M.I. (1970) S.C.R. 699; Srivastava v. M.M.I. (1973) F.C. 138, 36 D.L.R. (3d) 688.

#### 2.5 Francis Regan V. M.E.I.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1).

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - PERMANENT RESIDENCE OBTAINED IN OTHER COUNTRY - OUTSIDE CANADA FOR SHORT PERIODS AND FOR A TEMPORARY PURPOSE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 24(1), 32(5)(d).

The appellant upon arrival in Canada was admitted as a landed immigrant. About five years later, he was admitted into the United States as a permanent resident. He was apparently crossing between the United States and Canada fairly frequently in the course of his professional activities. The evidence showed that he always maintained a home in Canada, he is married to a Canadian landed immigrant and both are working permanently in Canada.

**Coram:** J.V. Scott (Chairman), J.-P. Houle, R. Tremblay **Appeal heard:** in Montreal, June 28, 1978 **Judgment pronounced:** August 9, 1978 **Reasons by:** J.V. Scott (6 pp.), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-1065 **Counsel:** Mrs. V. Regan, for the appellant; J.R. St-Louis, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds, order of deportation quashed. The appellant has not lost his status as a permanent resident of Canada, although he had acquired permanent status in the United States; his evidence respecting his real intention, his animus manendi, insofar as Canada was concerned was unshaken in examination and cross-examination. Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125)

Weselak, Benedetti, Teitelbaum, 14th June 1978 (not yet reported); Wenber, v. M.M.I. 4 I.A.C. 292; Sciortino v. M.M.I. 10 I.A.C. 341; Kilkenny, Erlyn v. M.M.I. (I.A.B. 76-9024), Weselak, Benedetti, Glogowski, 9th February 1976 (not yet reported); Inoue v. M.M.I. 11 I.A.C. 410.

## 2.6 Lise Easton v. M.E.I.

SPONSORSHIP - SPONSOREE CONVICTED OF MANSLAUGHTER - CASE DECIDED ON THE RECORD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 78, 79, 125(3), 128 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d).

The ground for refusal of the sponsorship was that the husband sponsored had been convicted of manslaughter and found inadmissible pursuant to section 5(d) of the Immigration Act, 1952 (repealed).

Coram: J.-P. Houle (Vice-Chairman), G. Legaré, R. Tremblay Appeal heard: in Montreal, May 29, 1978 Judgment pronounced: May 29, 1978 Reasons by: J.-P. Houle (2 pp.), concurred in by G. Legaré and R. Tremblay Language of reasons: available in English and French Docket no.: 77-1090 Counsel: M.A. Kulba, Esq., for the respondent.

Held (3-0) Appeal dismissed. The husband of the appellant is a prohibited person described in section 19(2)(a)(ii) of the Immigration Act, 1976.

## 2.7 Maria Teresa Greco v. M.E.I.

SPONSORSHIP - SECURITY CERTIFICATE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 79(3), 83(1), 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 21.

SECURITY CERTIFICATE - SPONSORSHIP - EFFECT OF S. 83 OF THE IMMIGRATION ACT, 1976.

Pursuant to section 21 of the Immigration Appeal Board Act, R.S.C. 1970, c. I-3 (repealed), a security certificate regarding the sponsored application for landing was filed with the Immigration Appeal Board.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Montreal, April 19, and June 7, 1978 Judgment pronounced: June 7, 1978 Reasons by: J.-P. Houle (2 pp.), concurred in by F. Glogowski and R. Tremblay Language of reasons: available in English and French Docket no.: 77-1152 Counsel: N. Brott, Barrister and Solicitor, for the appellant; S. Marcoux-Paquette, Barrister and Solicitor for the respondent.

Held (3-0) Appeal dismissed. Pursuant to section 83 of the Immigration Act, 1976, the Board was unable to do otherwise.

## 2.8 Wladyslaw Poplawski v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - WITHDRAWAL OF SPONSORSHIP - DEPORTATION OF THE SPONSOREE - SECOND SPONSORSHIP APPLICATION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

The appellant married the sponsoree while she was in Canada on a visitor's visa and he then sponsored her. He signed a statutory declaration withdrawing the sponsorship which resulted in the issue of an order of deportation against the sponsoree. The day before her deportation he submitted a new sponsorship application.

Coram: F. Glogowski (Vice-Chairman), R. Tremblay, U. Benedetti Appeal heard: in Toronto, July 27, 1978 Judgment pronounced: July 27, 1978 Reasons by: R. Tremblay (6 pp.), concurred in by F. Glogowski and U. Benedetti Language of reasons: available in English and French Docket no.: 78-9103 Counsel: T. Lobu, Esq., for the appellant; L. Williams, Esq., for the respondent.

Held (3-0) The appeal is dismissed. The Board finds that the sponsoree has used the sponsor to remain in Canada and is of the opinion that their marriage was one of convenience and that she was ready to use all means to stay in Canada.

2.9 Donna Marie Singh v. M.E.I.

SPONSORSHIP - BIGAMOUS MARRIAGE - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 128 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c), 7(3) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

The appellant made an application to sponsor her husband after their marriage. It is alleged as ground for refusal of the sponsorship that the sponsoree was already married in India before he arrived in Canada. The record contains written allegations in respect of this previous marriage and a declaration signed by the sponsoree to contradict these pieces of evidence.

Coram: A.B. Weselak (Vice-Chairman), D. Petrie, R. Tremblay  
Toronto, August 23, 1978 Judgment pronounced: August 23, 1978 Appeal heard: in  
Reasons by: A.B. Weselak (3 pp.), concurred in by D. Petrie and R. Tremblay  
Language of reasons: available in English and French Docket no.: 78-9088 Counsel: M. Bhabha, Esq.  
for the respondent.

Held (3-0) Appeal dismissed. There is sufficient evidence to conclude that the sponsoree was previously married and the declaration of the sponsoree which is self-serving is suspect, the sponsoree was not free to marry the sponsor and he is not within the family class which is eligible for sponsorship. Enem, Rhonda Leslie v. M.E.I. (I.A.B. 77-9470), Weselak, Benedetti, Petrie, 10th May 1978 (not yet reported).

2.10 Collyne Giwa-Salvador v. M.E.I.

SPONSORSHIP - SPONSOREE ORDERED DEPORTED ON ALLEGATION THAT HE WAS NOT FREE TO MARRY - MINISTER'S PERMIT - CANADIAN MARRIAGE VALID - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, SS. 28(1), 31 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(3) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

The appellant filed an application to sponsor her husband in Canada which application was refused on the ground that the sponsoree was not free to marry since he had alleged, believing it would be to his advantage, that he was married with a child in Nigeria. A deportation order was then issued and was appealed to the Federal Court and quashed on a point of law.

Coram: J.V. Scott (Chairman), C.M. Campbell, E. Teitelbaum  
Vancouver, August 16, 1978 Judgment pronounced: August 25, 1978 Appeal heard: in  
Reasons by: C.M. Campbell (5 pp.), concurred in by J.V. Scott and E. Teitelbaum  
Language of reasons: available in English and French Docket no.: 78-6004 Counsel: B. Steinfeld, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal allowed on equitable grounds. The sponsoree appeared to have lied in declaring he had a wife and child in Nigeria, his Canadian marriage to the appellant is found to be valid and the relationship appears to be genuine.

2.11 Evelyn Henriska v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - CASE DECIDED ON THE RECORD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD RULES, 1978, R. 31(3).

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay  
Montreal, August 29, 1978 Judgment pronounced: August 29, 1978 Appeal heard: in  
Reasons by: J.-P. Houle (2 pp.), concurred in by F. Glogowski and R. Tremblay  
Language of reasons: available in English and French Docket no.: 78-1004

Held (3-0) Appeal allowed on legal grounds. The sponsorship application was refused on the sole ground that the marriage was entered into to facilitate admission into Canada. Relying on the record filed there is no evidence to support the ground of refusal.

2.12 Eduardo Estanislao Encina-Perez and wife Ester Del Carmen Gallardo Rojas De Encina v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - REFUGEE PROTECTED BY THE CONVENTION - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The husband, appellant, claiming refugee status on the ground that he had been an active member in the labour union movements in Chile and that he was a strong supporter of the Allende Regime before the coup in 1973. As a result of this membership, his wife and children were victims of harassments after the husband had left Chile.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, G. Legaré  
**Appeal heard:** in Montreal, April 13, 1978  
**Judgment pronounced:** April 13, 1978  
**Reasons by:** F. Glogowski (5 pp.), concurred in by J.-P. Houle and G. Legaré  
**Language of reasons:** available in English and French  
**Docket no.:** 78-1013 78-1013A  
**Counsel:** G. Sciortino, Barrister and Solicitor, for the appellants; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, orders of deportation quashed, landing directed. On the evidence, the political activities of the male appellant before the coup d'Etat in 1973 give reasonable grounds to believe that he is a refugee protected by the Convention and that he would fear persecution if he would return to Chile. As for his wife, although there are no reasonable grounds for believing that she is a refugee protected by the Convention, there is sufficient evidence to grant her special relief on the ground that she and the children would suffer unusual hardship if they were separated from the husband. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Glogowski, Houle, Legaré, 12th April 1978 (not yet reported).

2.12 Jose Sebastian Cartes Soto v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(vi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14, 15.

The appellant arrived in Canada as a visitor. He filed a claim to refugee status only when his wife and children came to join him in Canada. He alleged that he lost his job because he was a member of the Socialist Party in Chile but from the evidence at the inquiry and at the hearing it appeared that his real intention in coming to Canada was to come permanently, and that he made his refugee claim only as a last resort in order to stay in Canada.

**Coram:** J.-P. Houle (Vice-Chairman), G. Legaré, R. Tremblay  
**Appeal heard:** in Montreal, April 26, 1978  
**Judgment pronounced:** April 28, 1978  
**Reasons by:** J.-P. Houle (7 pp.), concurred in by G. Legaré and R. Tremblay  
**Language of reasons:** available in English and French  
**Docket no.:** 78-1165  
**Counsel:** W.E. Wener, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, order of deportation quashed and landing directed. The appellant is not a refugee as defined in the Convention but there are reasonable doubts that if he were returned to his country, Chile, he would suffer unusual hardship and that he would then become a refugee.

2.14 Maria Violetta Moyano Garay v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - SUBSEQUENT CHANGE IN GOVERNMENT - LOSS OF PROFESSIONAL POSITION - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14(b), 15(1), UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant is a citizen of Chile and because of her active membership in the Socialist Party before the coup in 1973, she was victim of numerous harassments such as losing her job as a nurse in a public institution and the only way she could support herself was to operate a little grocery store.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay  
**Appeal heard:** in Montreal, June 6, 1978  
**Judgment pronounced:** June 7, 1978  
**Reasons by:** J.-P. Houle (5 pp.), concurred in by F. Glogowski and R. Tremblay  
**Language of reasons:** available in English and French  
**Docket no.:** 78-1025  
**Counsel:** W.G. Morris, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, order of deportation quashed and landing directed. Although Spain might receive her, this is not pertinent since ordering the execution of the deportation especially after the time she already lived in Canada and the fact that she claimed political refugee status would be tantamount to assume the risk of placing the appellant in a situation where it would be plausible that she would become a refugee as defined in the Convention.

2.15 Behirun Kidane v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP - MEMBER OF AN ETHNIC GROUP - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(f), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15.

The appellant, an Eritrean, first arrived in Canada as a visitor, and obtained an extension under the same status, and subsequently obtained five extensions as a student. It is only almost 2 years after his arrival into Canada that he submitted a claim to refugee status. The reason why he waited so long is that he was hoping that the situation between Ethiopia and Eritrea would get better and result in peace.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay  
**Judgment pronounced:** June 8, 1978  
**Appeal heard:** in Montreal, June 8, 1978  
**Reasons by:** F. Glogowski (6 pp.), concurred in by J.-P. Houle and R. Tremblay  
**Language of reasons:** available in English and French  
**Docket no.:** 78-1043  
**Counsel:** J. Grey, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, order of deportation quashed and landing directed. The appellant was considered a credible witness and found to meet the criteria of a refugee as defined in the United Nations Convention relating to the status of the refugees. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Houle, Legaré, Glogowski, 12th April 1978 (not yet reported).

2.16 D'Artagnan Julio Avila Gallardo v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - MEMBER OF A POLITICAL PARTY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11(1)(c).

The appellant, a citizen of Chile, arrived in Canada as a visitor after spending more than 2 years in Argentina. He only claimed refugee status for the first time after he had obtained an extension of his Canadian visitor's visa. At the hearing there were contradictions between his declaration and his testimony and some exaggeration on the treatment he had received while in detention in Chile.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie  
**Judgment pronounced:** June 29, 1978  
**Appeal heard:** in Toronto, June 29, 1978  
**Reasons by:** U. Benedetti (8 pp.), concurred in by A.B. Weselak and D. Petrie  
**Language of reasons:** available in English and French  
**Docket no.:** 78-9100  
**Counsel:** T.W. Morrison, Esq., for the appellant; L. Williams, Esq., for the respondent.

**Held** (3-0) Appeal dismissed. The appellant is not a refugee protected by the Convention, he does not appear to be a credible witness, moreover, the method he employed to enter Canada and his actions thereafter were not those of a person trying to be recognized as a political refugee.

2.17 Jut Wong Cheung v. M.E.I.

REFUGEE CLAIM - CREDIBILITY - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 11(2), (3) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The applicant arrived in Canada as a member of a crew and remained here after the departure of the ship. He remained in Canada illegally for almost four years without reporting to the Immigration authorities or making any claim to refugee status.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum  
**Judgment pronounced:** July 19, 1978  
**Appeal heard:** in Toronto, July 19, 1978  
**Reasons by:** A.B. Weselak (5 pp.), concurred in by U. Benedetti and E. Teitelbaum  
**Language of reasons:** available in English and French  
**Docket no.:** 77-9426  
**Counsel:** I.W. Bardyn, Barrister and Solicitor, for the appellant; M. Bhabha, Esq., for the respondent.

**Held** (3-0) Claim refused to proceed and execution of deportation order directed. The appellant's desire to stay in Canada as a refugee is prompted not by persecution but by the fact that he does not agree with the political ideologies of the Red Chinese regime and does not approve of the existing social economic base of their society. The delay in making his claim casts doubt on his credibility. M.M.I. v. Diaz-Fuentes (1974) F.C. 331, 52 D.L.R. (3d) 463; Lugano v. M.M.I. (1976) 2 F.C. 438.

2.18 Angel Hernandez Magana and Digna Gloribel Lima De Hernandez v. M.E.I.

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70(1), 71(2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(c).

The female applicant arrived in Canada as a visitor and was followed by her husband and her four children. Their claims to refugee status are mainly based on the fact that the female applicant had been kidnapped "by a right-wing group" and held incommunicado for about three weeks in order that she would change her attitude toward the government.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay **Appeal heard:** in Montreal, August 28, 1978 **Judgment pronounced:** August 28, 1978 **Reasons by:** F. Glogowski (9 pp.), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-1071 78-1071A.

**Held** (3-0) Applications refused to proceed and applicants are not Convention refugees. There is nothing to indicate that the female applicant was in fact politically involved and that her kidnapping was really of political nature.

2.19 Bassam Adib El Charif v. M.E.I.

MOTION FOR REOPENING APPEAL - GROUNDS CONSTITUTING NEW EVIDENCE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 15.

The new evidence introduced to support the reopening of the appeal is that the petitioner is now married to a Canadian citizen, a child is born of that marriage and that the petitioner has now completely rehabilitated himself.

**Coram:** J.-P. Houle (Vice-Chairman), G. Legaré, R. Tremblay **Appeal heard:** in Montreal, May 25, 1978 **Judgment pronounced:** May 25, 1978 **Reasons by:** J.-P. Houle (3 pp.), concurred in by G. Legaré and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 73-2804 **Counsel:** J.H. Grey, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Motion allowed. The new facts creating a change of circumstances do not constitute ex post facto evidence which would not be admissible and the petitioner has not, at the time of presentation of his motion, exhausted all his legal remedies. Chan v. M.M.I. 6 I.A.C. 429.

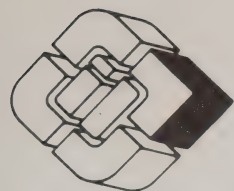
2.20 Ramon De Jesus Escobar v. M.E.I.

JURISDICTION OF THE IMMIGRATION APPEAL BOARD - REFUGEE CLAIMANT ORDERED DEPORTED - SECTION 22 REPORT MADE UNDER THE IMMIGRATION ACT, 1952 - INQUIRY HELD AFTER PROCLAMATION OF THE IMMIGRATION ACT, 1976 - INTERPRETATION OF S. 126(c) OF THE IMMIGRATION ACT, 1976 - VESTED RIGHTS OF APPEAL - RETROSPECTIVE EFFECT OF THE IMMIGRATION ACT, 1976 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1), (2)(d), 20(1)(a), 23(3)(c), 32(5)(b), 45, 46, 47, 48, 126(a), (c), 128(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), (2), (3).

The inquiry held in respect of the appellant commenced and was made pursuant to a report under section 22 of the Immigration Act, 1952. The exclusion order resulting from this inquiry was made after the proclamation of the Immigration Act, 1976. The counsel for the respondent submitted that the Board has jurisdiction to deal with this matter pursuant to section 11(3) of the Immigration Appeal Board Act (repealed) since the appellant's right of appeal became a vested right when the section 22 report was made, and if the matter was dealt with under the Immigration Act, 1976, it would deprive him of his vested right.

**Coram:** J.V. Scott (Chairman), J.-P. Houle, R. Tremblay **Appeal heard:** in Montreal, June 28, 1978 **Judgment pronounced:** August 9, 1978 **Reasons by:** J.V. Scott (4 pp.), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-1064 **Counsel:** R. Deguire, Barrister and Solicitor, for the appellant; S. Marcoux-Paquette, Barrister and Solicitor, for the respondent.

**Held** (3-0) Board has no jurisdiction. Section 126(c), by equating a report under section 22 of the Immigration Act, 1952 to section 20(1)(a) of the Immigration Act, 1976, retrospectively changes not only the procedure but the rights in respect of a person who claims to be a refugee. The plain wording of this section leaves little doubt that the intention of Parliament was to substitute the new rights for the old even in respect of persons against whom proceedings had started before proclamation. Dixie v. Royal Columbian Hospital (1941) 2 D.L.R. 138; William v. Irvine (1893) 22 S.R.C. 108.



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 3

Date June 27, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## DEPORTATION ORDERS

### 3.1 Omar Ahmad Mohammed Bakir v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF THEFT UNDER \$200. - ORDERED DEPORTED UNDER S. 18(1)(e)(ii) OF THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - INTERPRETATION OF S. 125(3) OF THE IMMIGRATION ACT, 1976 - RETROSPECTIVE EFFECT - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2), 25 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72(1)(a), 125(3), 128(1) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 294(b), 722(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23, SS. 35, 36.

SECURITY CERTIFICATE - EFFECT - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 21 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 83.

### 3.2 Andrew Edward Mucha v. M.E.I

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF OFFENCES UNDER THE CRIMINAL CODE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 27(1)(d) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 294, 722 - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, S. 1.

### 3.3 Mindette Heather Marie Pennant v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF CRIMINAL OFFENCES PURSUANT TO THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2), 25 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72, 125(3), 128(1) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 133(2), 195(1), 722(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

### 3.4 Haralampos or Charalampe or Robert Giannakis v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - ORDERED DEPORTED UNDER THE IMMIGRATION ACT, 1952, PURSUANT TO TWO GROUNDS - TRANSITIONAL - GROUNDS IN THE ORDER ARE SEVERABLE - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18, 18(1)(e)(iii), (viii), (2), 25 - IMMIGRATION REGULATIONS, PART I, S. 33(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72, 125(3), 128(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

### 3.5 Joao Evangelista Lourenco v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - JURISDICTION OF BOARD - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 4(1), 5(1), 8, 9(1), 12(1), 14(1), 19(2)(d), 20(1)(a), 24(2), 25, 32(5)(b), 59(1), 72.

### 3.6 Elizabeth Rowe v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - ECONOMIC ADVANTAGE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1).

## SPONSORSHIPS

### 3.7 Shirley Isabel Myers v. M.E.I.

SPONSORSHIP - JURISDICTION OF BOARD - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT OF APPEAL TO BOARD - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 59, 79, 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1) - IMMIGRATION REGULATIONS, 1978, S. 4.

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT OF APPEAL TO BOARD.

SPONSORSHIP - GROUNDS OF REFUSAL - SPONSOR NOT A RESIDENT IN CANADA WHEN THE SPONSORSHIP APPLICATION WAS MADE - RIGHT TO SPONSOR - SPONSOREE CONVICTED OF EMBEZZLEMENT - ORDERED DEPORTED UNDER S. 5(d) OF THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - TRANSITIONAL - INTERPRETATION OF S. 125(3) OF THE IMMIGRATION ACT, 1976 - RETROSPECTIVE EFFECT - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 19(2)(b), 125(3) - CRIMINAL CODE, SS. 290, 294(b)(1), (11), 722(1).

CONSENT OF MINISTER - NOT CRUCIAL - GROUND FOR REFUSAL OF THE SPONSORSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 57, 79(1)(b).

3.8 Assunta Barile v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - HUSBAND ORDERED DEPORTED PURSUANT TO S. 18(1)(e)(x) - MINISTER'S CONSENT - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 18(1)(e)(x), 35 - IMMIGRATION REGULATIONS, 1978, S. 4(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

3.9 Kim Allyson Tenn v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

3.10 Clifford Rolston Marshall v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - MARRIAGE OF CONVENIENCE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128.

3.11 Marie-Victoire Alphonse v. M.E.I.

SPONSORSHIP - OBLIGATION OF FINANCIAL SUPPORT - SPONSOREE IN A PRIVILEGED CLASS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(b), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, SS. 4(b), 6(3)(b) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(h).

3.12 Huguette Guillaume v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE DEPORTED FROM CANADA - PUBLIC CHARGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1970, S. 4(a) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(h), (p), (t), 35.

3.13 Linda Louise Gachinga v. M.E.I.

SPONSORSHIP - SPONSOREE ILLEGALLY IN CANADA - MARRIAGE OF CONVENIENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

3.14 Janice May Adams v. M.E.I.

SPONSORSHIP - JURISDICTION OF BOARD - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT TO SPONSOR - MEANING OF THE WORD "RESIDENCE" - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 24(1)(a), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR RESIDING OUTSIDE CANADA AT TIME SPONSORSHIP APPLICATION WAS MADE.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - REHABILITATION - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 19(2)(a)(ii) - CRIMINAL CODE, R.S.C. 1970, C. C-34, S. 246(2)(a).

3.15 Jennifer Anne Zilberleib v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID AND SUBSISTING VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 1 - IMMIGRATION ACT, 1976-77, C. 52, SS. 9(1), 79, 125(3), 128.

3.16 Cesario E. Monton v. M.E.I.

SPONSORSHIP - FATHER WAS IN A PROHIBITED CLASS AT TIME OF APPLICATION - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(b) - IMMIGRATION REGULATIONS, PART I, SS. 2(ca), 31(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

3.17 Nichan Boudjaklian v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 9(1), 79 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

3.18 Jaspal Kaur Chahil v. M.E.I.

SPONSORSHIP - SPONSOREE'S AGE AND RELATIONSHIP TO THE APPELLANT - CREDIBILITY OF THE WITNESSES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a).

REFUGEES

3.19 Marina Galvis De Cardona v. M.E.I.

REFUGEE - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), (2), 14(b), 15(1)(b)(ii) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(vi), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ACT. 1A(2).

3.20 Juan Orinaldo Yanez Delgado v. M.E.I.

REFUGEE - REDETERMINATION - JURISDICTION OF BOARD - WHETHER THE APPLICANT HAD BEEN INFORMED BY THE MINISTER IN WRITING OF HIS DECISION - WHETHER AN INQUIRY IN RESPECT OF THE APPLICANT HAD EVER TAKEN PLACE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45, 48, 59(1), 70, 71.

JURISDICTION OF BOARD

3.7 Shirley Isabel Myers v. M.E.I.

3.14 Janice May Adams v. M.E.I.

SECURITY CERTIFICATE

3.1 Omar Ahmad Mohammed Bakir v. M.E.I.

CONSENT OF MINISTER

3.7 Shirley Isabel Myers v. M.E.I.

### 3.1 Omar Ahmad Mohammed Bakir v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF THEFT UNDER \$200. - ORDERED DEPORTED UNDER S. 18(1)(e)(ii) OF THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - INTERPRETATION OF S. 125(3) OF THE IMMIGRATION ACT, 1976 - RETROSPECTIVE EFFECT - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2), 25 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72(1)(a), 125(3), 128(1) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 294(b), 722(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23, SS. 35, 36.

SECURITY CERTIFICATE - EFFECT - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 21 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 83.

The appellant, a permanent resident, was convicted of theft under \$200. and was ordered deported under the Immigration Act, 1952. He would not be subject to deportation under the Immigration Act, 1976.

A security certificate was issued after the order of deportation, pursuant to section 21 of the Immigration Appeal Board Act (repealed) and the appeal was heard after the proclamation of the Immigration Act, 1976.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, July 31, 1978 **Judgment pronounced:** September 1, 1978 **Reasons by:** A.B. Weselak (8 pp.), concurred in by U. Benedetti and D. Petrie **Language of reasons:** available in English and French **Docket no.** 78-9045 **Counsel:** C.L. Campbell, Barrister and Solicitor, for the appellant; T. Fulcher, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds. The effect of section 125(3) of the Immigration Act, 1976, is not only to make the effect of the Immigration Act, 1976 retrospective in respect of procedure, but also retrospective insofar as the substantive law is concerned. In considering an appeal after the 10th of April, 1978 from a deportation order made before that date, the Board must apply the provisions of the Immigration Act, 1976 and in order to sustain the order, the person must fall into a class under the provisions of the new Act which would make him subject to deportation.

Section 21 of the Immigration Appeal Board Act (repealed) is substantially reproduced in section 83 of the Immigration Act, 1976, but since this appeal is dealt with under section 72(1)(a) of the Immigration Act, 1976, the existence of a certificate does not bar the Board from allowing an appeal. Edmonton v. Northwestern Utilities Ltd., (1926) 3 W.W.R. 798, 22 Alta. L.R. 378, (1927) 1 D.L.R. 199, affirmed (1929) S.C.R. 186, (1929) 2 D.L.R. 4; Parks v. Can. Nor. Ry., (1911) 15 W.L.R. 445, affirmed 18 W.L.R. 118, 21 Man. R. 103, 14 C.R.C. 247.

### 3.2 Andrew Edward Mucha v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF OFFENCES UNDER THE CRIMINAL CODE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 27(1)(d) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 294, 722 - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, S. 1.

The appellant a landed immigrant was convicted of several offences under the Criminal Code and was ordered deported pursuant to section 18(1)(e)(ii) of the Immigration Act, 1952.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, July 17, 1978 **Judgment pronounced:** September 6, 1978 **Reasons by:** U. Benedetti (3 pp.), concurred in by A.B. Weselak and D. Petrie **Language of reasons:** available in English and French **Docket no.:** 77-9022 **Counsel:** R.G. Rivait, Barrister and Solicitor, for the appellant; M. Bhabha, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds. While the appellant was subject to deportation under the provisions of the Immigration Act, 1952, he is not subject to deportation under the provisions of the Immigration Act, 1976. Bakir, Omar Ahmad Mohammed v. M.E.I. (I.A.B. 78-9045), Weselak, Benedetti, Petrie, 1st September 1978 (not yet reported).

### 3.3 Mindette Heather Marie Pennant v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF CRIMINAL OFFENCES PURSUANT TO THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (2), 25 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72, 125(3), 128(1) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 133(2), 195(1), 722(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

The appellant, a permanent resident, was ordered deported pursuant to the Immigration Act, 1952 on the ground that she has been convicted of offences under the Criminal Code namely soliciting and failing to attend Court.

**Coram:** A.B. Weselak (Vice-Chairman), D. Petrie, E. Teitelbaum **Appeal heard:** in Toronto, June 27, 1978 **Judgment pronounced:** September 6, 1978 **Reasons by:** A.B. Weselak (4 pp.), concurred in by D. Petrie and E. Teitelbaum **Language of reasons:** available in English and French **Docket no.:** 78-9023 **Counsel:** T.J. Roland, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds, order of deportation quashed. While the appellant was subject to deportation under the provisions of the former Immigration Act, she would not be subject to deportation under the provisions of the Immigration Act, 1976. Bakir, Omar Ahmad Mohammed v. M.E.I. (I.A.B. 78-9045), Weselak, Benedetti, Petrie, 1st September 1978 (not yet reported).

### 3.4 Haralampos or Charalampe or Robert Giannakis v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - ORDERED DEPORTED UNDER THE IMMIGRATION ACT, 1952, PURSUANT TO TWO GROUNDS - TRANSITIONAL - GROUNDS IN THE ORDER ARE SEVERABLE - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18, 18(1)(e)(iii), (viii), (2), 25 - IMMIGRATION REGULATIONS, PART I, S. 33(1)(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72, 125(3), 128(1) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

The appellant was ordered deported under the Immigration Act, 1952 because when he made his application for admission into Canada, he gave false and misleading information, in that, he did not declare that he had been an inmate of an hospital for mental disease and further that he was an inmate of such an hospital.

**Coram:** A.B. Weselak (Vice-Chairman), D. Petrie, E. Teitelbaum **Appeal heard:** in Toronto, May 25, 1978 **Judgment pronounced:** September 7, 1978 **Reasons by:** A.B. Weselak (7 pp.), concurred in by D. Petrie and E. Teitelbaum **Language of reasons:** available in English and French **Docket no.:** 78-9069 **Counsel:** M.I. Nash, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

**Held** (3-0) Appeal allowed on equitable grounds. There is no provision in the Immigration Act, 1976 which can be equated to have been an inmate of an hospital for mental disease pursuant to section 18(1)(e)(iii) of the Immigration Act, 1952. In respect of the ground of giving false and misleading information; section 27(1)(e) of the Immigration Act, 1976 can be equated to section 18(1)(e)(viii) of the Immigration Act, 1952. The grounds in the order are severable and one ground in the order is sufficient to support the order so the deportation order is a valid order made in accordance with the Immigration Act and Regulations. However, there exist sufficient evidence to support special relief, the appellant has no close relative in Greece except an uncle, he is a landed immigrant, all his supportive family is in Canada. Bakir, Omar Ahmad Mohammed v. M.E.I. (I.A.B. 78-9045), Weselak, Benedetti, Petrie, 1st September 1978 (not yet reported).

### 3.5 Joao Evangelista Lourenco v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - JURISDICTION OF BOARD - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 4(1), 5(1), 8, 9(1), 12(1), 14(1), 19(2)(d), 20(1)(a), 24(2), 25, 32(5)(b), 59(1), 72.

The appellant arrived in Canada with his family and was granted permanent resident status. Eight years later he returned to Portugal stating that his wife was suffering in Canada because of the weather. He then travelled in and out of Canada for about four years, staying only for the summer months and working for the construction industry.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum **Appeal heard:** in Toronto, October 18, 1978 **Judgment pronounced:** October 18, 1978 **Reasons by:** A.B. Weselak (7 pp.), concurred in by U. Benedetti and E. Teitelbaum **Language of reasons:** available in English and French **Docket no.:** 78-9142 **Counsel:** D.M. Greenbaum, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

**Held** (3-0) Appeal dismissed for want of jurisdiction. Upon examination of the evidence as a whole, the appellant has abandoned Canada as his place of permanent residence, he is not a permanent resident as provided by section 72 of the Act, he has not met the burden of proof imposed upon him by section 8 of the Immigration Act. It appears that in the last four years the appellant has spent nineteen months in Canada as compared to thirty-nine months in Portugal. He is using Canada as a

place to obtain employment in the seasonal construction industry and this does not appear to be consistent with his stated intention of not abandoning Canada as his permanent place of residence. Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, 14th June 1978 (not yet reported); Adams, Janice May v. M.E.I. (I.A.B. 78-9455), Benedetti, Weselak, Petrie, 3rd October 1978 (not yet reported).

### 3.6 Elizabeth Rowe v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - ECONOMIC ADVANTAGE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1).

The appellant arrived in Canada as a landed immigrant under the immigration domestic's program. On her application she deliberately withheld the existence of her three children since she knew that otherwise her application would fail.

Coram: J.V. Scott (Chairman), C.M. Campbell, E. Teitelbaum Appeal heard: in Edmonton, August 17, 1978 Judgment pronounced: October 25, 1978 Reasons by: C.M. Campbell (3 pp.), concurred in by J.V. Scott and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-6053 Counsel: C. Rice, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal dismissed. The appeal was based on the sole desire to enjoy the quality of life that results from the economic advantages available here and economic advantage alone is no basis for granting special relief.

### 3.7 Shirley Isabel Myers v. M.E.I.

SPONSORSHIP - JURISDICTION OF BOARD - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT OF APPEAL TO BOARD - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 59, 79, 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1) - IMMIGRATION REGULATIONS, 1978, S. 4.

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT OF APPEAL TO BOARD.

SPONSORSHIP - GROUNDS OF REFUSAL - SPONSOR NOT A RESIDENT IN CANADA WHEN THE SPONSORSHIP APPLICATION WAS MADE - RIGHT TO SPONSOR - SPONSOREE CONVICTED OF EMBEZZLEMENT - ORDERED DEPORTED UNDER S. 5(d) OF THE IMMIGRATION ACT, 1952 - NO SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - TRANSITIONAL - INTERPRETATION OF S. 125(3) OF THE IMMIGRATION ACT, 1976 - RETROSPECTIVE EFFECT - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 19(2)(b), 125(3) - CRIMINAL CODE, SS. 290, 294(b)(i), (ii), 722(i).

CONSENT OF MINISTER - NOT CRUCIAL - GROUND FOR REFUSAL OF THE SPONSORSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 57, 79(1)(b).

The appellant sponsored her husband while she was residing in England. The respondent contested the jurisdiction of the Board on the ground that she was ineligible to sponsor since she was not residing in Canada at the time the sponsorship application was made.

Both the Immigration Regulations, Part I (repealed) and the Immigration Regulations, 1978, impose a condition precedent to a valid sponsorship application: residence in Canada by the sponsor. The sponsor was not entitled to sponsor being not a resident in Canada, this ground was a valid ground for refusal. A further ground for refusal of the sponsorship was that the husband had been convicted of embezzlement a crime involving moral turpitude under section 5(d) of the Immigration Act, 1952, and of other minor crimes of theft and fraud.

The sponsoree was once admitted to Canada as a permanent resident. He was ordered deported and was physically deported and there is no evidence that he ever sought or obtained the Minister's consent to return to Canada.

Coram: J.V. Scott (Chairman), F. Glogowski, R. Tremblay Appeal heard: in St. John's, Newfoundland, May 8, 1978 Judgment pronounced: August 31, 1978 Reasons by: J.V. Scott (9 pp.), concurred in by F. Glogowski and R. Tremblay Language of reasons: available in English and French Docket no.: 78-3006 Counsel: D. Barry, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

Held (3-0) The Board has jurisdiction to deal with the appeal. The appellant, since she is a Canadian citizen, had a right of appeal when she filed her appeal pursuant to section 17 of the Immigration Appeal Board Act (repealed) before the proclamation

of the Immigration Act, 1976. Because of the interpretation of section 125(3) of the Immigration Act, 1976 this right is now falling within section 79 of the Immigration Act, 1976. There is no reference in section 17 of the Immigration Appeal Board Act (repealed) or in section 79(2) of the Immigration Act, 1976 requiring residence in Canada of a Canadian citizen who appeals to the Board.

Appeal allowed on equitable grounds. It is unlikely that the husband would be inadmissible under the Immigration Act, 1976, by reason of his criminal convictions. Although this ground of refusal was not stated, the husband having been deported from Canada and not having the Minister's consent was inadmissible. There was, however, sufficient evidence to support special relief.

The sponsoree would be inadmissible pursuant to section 57(1) and 19(2)(d) of the Immigration Act, 1976 and any refusal of him on this ground would be in accordance with section 79(1)(b) of the Act. Wilkerson, Luciev. M.E.I. (I.A.B. 75-1168), Houle, Legaré, Tremblay, 29th May 1978 (not yet reported); Fahel, Kathleen May v. M.E.I. (I.A.B. 78-9043), Weselak, Benedetti, Teitelbaum, 6th June 1978 (not yet reported); Bakir, Omar Ahmad Mohammed v. M.E.I. (I.A.B. 78-9045), Weselak, Benedetti, Petrie, 1st September 1978 (not yet reported).

### 3.8 Assunta Barile v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - HUSBAND ORDERED DEPORTED PURSUANT TO S. 18(1)(e)(x) - MINISTER'S CONSENT - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 18(1)(e)(x), 35 - IMMIGRATION REGULATIONS, 1978, S. 4(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

The appellant made an application to sponsor her husband into Canada. It is alleged as ground for refusal of the sponsorship that the marriage was a marriage of convenience. A second letter of refusal refers to the fact that the husband had been ordered deported and was deported from Canada.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay **Appeal heard:** in Montreal, September 12, 1978 **Judgment pronounced:** September 12, 1978 **Reasons by:** F. Glogowski (6 pp), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-1008 **Counsel:** G. Hargreaves, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal allowed on equitable grounds. The appellant is a credible and very sincere witness and there is no doubt that there was no endeavour on her part to circumvent the Immigration Act or Regulations and that she entered into a bona fide marriage. Also there is no evidence in the record that her husband had any sinister plans to use their relationship for gaining permanent residence in this country or that his presence in Canada would be detrimental.

### 3.9 Kim Allyson Tenn v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

The appellant filed an application to sponsor the admission of her husband into Canada, which application was refused on the ground that the sponsoree was not in possession of a valid and subsisting visa.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie **Appeal heard:** in Toronto, September 14, 1978 **Judgment pronounced:** September 14, 1978 **Reasons by:** D. Petrie (5 pp.), concurred in by A.B. Weselak and U. Benedetti **Language of reasons:** available in English and French **Docket no.:** 78-9124 **Counsel:** G.L. Segal, Barrister and Solicitor, for the appellant; W. MacIntyre, Esq., for the respondent.

**Held** (3-0) Appeal allowed on equitable grounds. The Board does not condone the sponsoree's illegal stay in Canada and the fact that he had failed to disclose certain convictions on his application for permanent residence; the convictions in Jamaica happened over eight years ago and were regarded as minor by the Jamaican courts. He received a discharge on both charges of possession of marijuana in Canada, he testified that he no longer uses marijuana and he has no other convictions. The couple has been married 3 years and have 2 Canadian born children.

3.10 Clifford Rolston Marshall v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - MARRIAGE OF CONVENIENCE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128.

The appellant made an application to sponsor his wife into Canada which application was refused on the ground that the person sponsored was not in possession of a valid and subsisting visa.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum Appeal heard: in Toronto, September 18, 1978 Judgment pronounced: September 18, 1978 Reasons by: E. Teitelbaum (4 pp.), concurred in by A.B. Weselak and U. Benedetti Language of reasons: available in English and French Docket no.: 78-9123 Counsel: L. Marshall, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

Held (3-0) Appeal allowed on equitable grounds. There is no question as to the validity of the marriage, the relationship existing between the sponsor and the sponsoree appears to be an harmonious and affectionate one, despite a considerable disparity on age.

3.11 Marie-Victoire Alphonse v. M.E.I.

SPONSORSHIP - OBLIGATION OF FINANCIAL SUPPORT - SPONSOREE IN A PRIVILEGED CLASS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(b), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, SS. 4(b), 6(3)(o) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(h).

The appellant filed an application to sponsor her 15 years old daughter for admission into Canada. The ground of refusal of the sponsorship is that the sponsoree would be a public charge.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Montreal, September 20, 1978 Judgment pronounced: September 20, 1978 Reasons by: F. Glogowski (6 pp.), concurred in by J.-P. Houle and R. Tremblay Language of reasons: available in English and French Docket no.: 78-1021 Counsel: J. Westmoreland-Traoré, Barrister and Solicitor, for the appellant; R. Léger, Barrister and Solicitor, for the respondent.

Held (3-0) Appeal allowed on legal grounds. The sponsored person is an unmarried daughter under twenty-one years of age of the sponsor and does not have any issue. She is a person included in the privileged class pursuant to section 6(3)(b) of the Immigration Regulations, 1978. This regulation must be read in conjunction with section 19(b) of the Act so that this section does not apply to sponsored children.

3.12 Huguette Guillaume v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE DEPORTED FROM CANADA - PUBLIC CHARGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1970, S. 4(a) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(h), (p), (t), 35.

The appellant filed an application for admission to Canada of her husband which application was apparently refused on the grounds that he had been deported from Canada and was likely to become a public charge if he were allowed to return.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Montreal, September 20, 1978 Judgment pronounced: September 20, 1978 Reasons by: F. Glogowski (5 pp.), concurred in by J.-P. Houle and R. Tremblay Language of reasons: available in English and French Docket no.: 78-1005 Counsel: W. Warkachuk, Barrister and Solicitor, for the appellant; R. Léger, Barrister and Solicitor, for the respondent.

Held (3-0) Appeal allowed on compassionate grounds. The appellant was a credible and sincere witness, on her part it is clear that there is no endeavour to circumvent the Immigration Act and Regulations and that she entered this marriage bona fide and is genuinely interested in bringing her husband to live with her as man and wife and also there is no evidence that the presence of her husband in Canada would be detrimental in anyway to the interests and welfare of other Canadians especially in that he would not become a public charge, since the sponsor is capable of supporting him.

3.13 Linda Louise Gachinga v. M.E.I.

SPONSORSHIP - SPONSOREE ILLEGALLY IN CANADA - MARRIAGE OF CONVENIENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 7(1)(c) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

The appellant filed a sponsorship application on behalf of her husband which application was refused on the ground that he was not in possession of a valid and subsisting immigrant visa. The sponsoree is in Canada illegally for over ten years and has never bothered to apply for his landed status before now. Even though he has asked his Canadian wife to sponsor him, he no longer lives with her and his son, he lives with another woman but says reconciliation with his wife might occur.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, October 2, 1978 Judgment pronounced: October 2, 1978 Reasons by: U. Benedetti (6 pp.), concurred in by A.B. Weselak and D. Petrie Language of reasons: available in English and French Docket no.: 78-9141 Counsel: B. Jackman, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

Held (3-0) Appeal dismissed. The refusal of the sponsor's application is valid in law and made in accordance with the Immigration Act and Regulations. It is abundantly clear that the sponsoree is using his marriage for immigration purposes, and the sole ground of the separation from his son cannot be sufficient to sponge out the complete disregard by the sponsoree of Canadian immigration laws.

3.14 Janice May Adams v. M.E.I.

SPONSORSHIP - JURISDICTION OF BOARD - SPONSOR RESIDING OUTSIDE CANADA AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT TO SPONSOR - MEANING OF THE WORD "RESIDENCE" - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 24(1)(a), 79, 125(3), 128 - IMMIGRATION REGULATIONS, 1978, S. 4(a) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR RESIDING OUTSIDE CANADA AT TIME SPONSORSHIP APPLICATION WAS MADE.

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE SIMILAR PROVISIONS UNDER THE IMMIGRATION ACT, 1976 - REHABILITATION - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 19(2)(a)(ii) - CRIMINAL CODE, R.S.C. 1970, C. C-34, S. 246(2)(a).

The appellant filed an application to sponsor her husband in Canada while she was physically residing outside Canada. She had first, while in Canada, made an application to sponsor her fiancé but was told that the application would be proceeded with much more facility if she would go to England and be married. Also she was pregnant and wanted to be with her husband for the latter months of pregnancy.

The ground of refusal of the sponsorship was that the husband had been convicted of crimes under the Immigration Act, 1952 which there are similar provisions under the Immigration Act, 1976.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, October 3, 1978 Judgment pronounced: October 3, 1978 Reasons by: A.B. Weselak (12 pp.), concurred in by U. Benedetti and D. Petrie Language of reasons: available in English and French Docket no.: 78-9455 Counsel: R.H. Greenley, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

Held (3-0) Two fundamental elements are essential to create a residence: (1) bodily residence in a place and (2) the intention of remaining in that place, it would appear, therefore, that residence is thus made up to fact and intention, the fact of abode and the intention of remaining and is a combination of facts and intention; neither bodily presence alone nor intention alone will suffice to create a residence. On the evidence that appellant did not at any time intend to abandon her residence in Canada and change her residence to England, therefore, at the time of making her application and at the time of the hearing of the appeal, she was, in fact, residing in Canada and was within the requirements of the Immigration Regulations, 1978 and could sponsor her husband.

Appeal allowed on equitable grounds. It is normally assumed that if a person has kept out of trouble for a period of five years since the termination of his sentence and has maintained employment and established reasonably close family relationships, that rehabilitation is well on its way. Bakir, Omar Ahmad Mohammed v. M.E.I. (I.A.B. 78-9045), Weselak, Benedetti, Petrie, 1st September 1978 (not yet reported); Blaha v. Minister of Citizenship and Immigration (1971) F.C. 521; St. John country Hospital v. Peck (1924) 2 D.L.R. 163.

3.15 Jennifer Anne Zilberleib v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID AND SUBSISTING VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 1 - IMMIGRATION ACT, 1976-77, C. 52, SS. 9(1), 79, 125(3), 128.

The appellant filed an application to sponsor her husband into Canada, which application was refused on the basis that the husband was not in possession of a valid visa. It appeared from the record that the refusal was really motivated by the fact that the sponsoree had been involved before his coming into Canada in political demonstrations, it was suspected that he had been convicted of an explosive charge and that he was a fugitive from Israeli law, also his marriage was suspected not to be a bona fide one.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum Appeal heard: in Toronto, October 19, 1978 Judgment pronounced: October 19, 1978 Reasons by: A.B. Weselak (5 pp.), concurred in by U. Benedetti and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-9090 Counsel: M.M. Green, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

Held (3-0) Appeal allowed on compassionate and humanitarian considerations. The sponsoree denied that he had been convicted or was a fugitive from Israeli law although he admitted involvement in a political demonstration in Israel. The sponsoree does not appear to be a person of criminal nature or with criminal tendencies and there is no evidence that he will be involved in active subversion in Canada, he and the appellant seemed to have reached an harmonious marriage and the fact that the appellant is pregnant justify the granting of a special relief. Enam, Rhonda Leslie v. M.E.I. (I.A.B. 77-9470), Weselak, Benedetti, Petrie, 10th May 1978 (not yet reported).

3.16 Cesario E. Monton v. M.E.I.

SPONSORSHIP - FATHER WAS IN A PROHIBITED CLASS AT TIME OF APPLICATION - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(b) - IMMIGRATION REGULATIONS, PART I, SS. 27(a), 31(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

The appellant filed an application to sponsor his parents and three brothers for admission to Canada. The application in respect of the father was refused on the ground that he did not comply with the medical requirements, he had tuberculosis. The letter of refusal is based on the Immigration Act, 1952 and the appeal was heard under the Immigration Act, 1976.

Coram: J.V. Scott (Chairman), C.M. Campbell, E. Teitelbaum Appeal heard: in Winnipeg, October 25, 1978 Judgment pronounced: October 25, 1978 Reasons by: J.V. Scott (4 pp.), concurred in by C.M. Campbell and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-6133 Counsel: C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal dismissed, in dealing with an application to sponsor relatives, the Immigration Regulations in force at the date of the application to sponsor must be applied, rather than an amendment which came into force subsequent to the application but before it was finally dealt with. McDoom v. M.M.I. (1978) 1 F.C. 323, 77 D.L.R. (3d) 559; Township of Nepean v. Leikin (1971) 1 O.R. 567.

3.17 Nichan Boudjaklian v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 9(1), 79 - IMMIGRATION REGULATIONS, 1978, S. 4(a).

The appellant filed an application to sponsor his wife into Canada which application was refused on the ground that she was not in possession of a valid and subsisting visa. The refusal is in accordance with the two. However, section 9(1) of the Immigration Act, 1976, is imperative; a valid marriage contracted with a Canadian citizen would not replace a visa.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay, E. Teitelbaum Appeal heard: in Montreal, November 6, 1978 Judgment pronounced: November 6, 1978 Reasons by: J.-P. Houle (6 pp.), concurred in by R. Tremblay and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-1972 Counsel: B. Sivak, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

Held (3-0) Appeal allowed on equitable grounds, there is a valid marriage, the appellant and his wife are living together in harmony. The sponsoree has no criminal background, her work has always been satisfactory, she is a citizen of Iran

but from her testimony it appears that she does not have any protection from this country, her only relatives are her parents living in Soviet Armenia and there would be problems in trying to go back due to political problems.

**3.18 Jaspal Kaur Chahil v. M.E.I.**

SPONSORSHIP - SPONSOREE'S AGE AND RELATIONSHIP TO THE APPELLANT - CREDIBILITY OF THE WITNESSES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a).

The appellant filed an application to sponsor the admission into Canada of her father and brother, the application on behalf of her brother was refused on the ground that he had not proved he was under 21 years of age at the time of application.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay **Appeal heard:** in Vancouver, January 16, 1979 **Judgment pronounced:** January 16, 1979 **Reasons by:** C.M. Campbell (3 pp.), concurred in by F. Glogowski and R. Tremblay **Language of reasons:** available in English and French **Docket no.:** 78-6129 **Counsel:** D.J. Rosenbloom, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

**Held** (3-0) Appeal allowed in law, although the evidence produced to the visa officer was of little value because not authenticated by the certified authority in India, the credibility of the witnesses leaves no doubt that the brother is related to the appellant and that he was under 21 years of age at the time of the application.

**3.19 Marina Galvis De Cardona v. M.E.I.**

REFUGEE - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), (2), 14(b), 15(1)(b)(ii) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(vi), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ACT. 1A(2).

The appellant filed a claim to refugee status on the ground that she was a member of a political group. Her testimony at the hearing revealed that she was not herself a member of the group but was only working in making pamphlets for the movement of which her brother was one of the leaders. She claims that prior to her departure, she received anonymous telephone calls from persons who made threats against her, her brother and her children and being fed up with the whole situation, she decided to leave the country following the proper procedures, although, she did not contact the Canadian authorities stationed in Bogota. Also, she never made any attempt to refugee status before now, in fact she arrived in Canada as a visitor and while en route to Canada, she spent time in Mexico without applying for any special status from the authorities of that country.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay **Appeal heard:** in Montreal, January 24, 1978, June 1, 1978 and August 1, 1978 **Judgment pronounced:** August 2, 1978 **Reasons by:** J.-P. Houle (13 pp.), concurred in by F. Glogowski and R. Tremblay **Language of reasons:** in English and French **Docket no.:** 77-1120 **Counsel:** W.G. Morris, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal dismissed, execution of the order of deportation directed. On the evidence, the appellant is not a refugee as defined in the Convention, she did not establish that she had a well-founded fear of persecution if she should return to her country of origin.

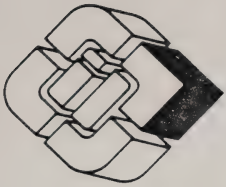
**3.20 Juan Ornela Yanez Delgado v. M.E.I.**

REFUGEE - REDETERMINATION - JURISDICTION OF BOARD - WHETHER THE APPLICANT HAD BEEN INFORMED BY THE MINISTER IN WRITING OF HIS DECISION - WHETHER AN INQUIRY IN RESPECT OF THE APPLICANT HAD EVER TAKEN PLACE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45, 48, 59(1), 70, 71.

The applicant filed an application for redetermination of his refugee claim stating that it was accompanied by the decision of the Minister which was in fact a convocation letter to attend the continuation of an inquiry. An inquiry had started under the Immigration Act, 1952 by a Special Inquiry Officer. It has never been continued or recommenced under the Immigration Act, 1976.

Coram: J.V. Scott (Chairman), J.-P. Houle, R. Tremblay Appeal heard: in Montreal, November 20, 1978 Judgment pronounced: November 22, 1978 Reasons by: J.V. Scott (10 pp.), concurred in by J.-P. Houle and R. Tremblay Language of reasons: available in English and French Docket no.: 78-1085 Counsel: R. Deguire, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

Held (3-0) Application dismissed for want of jurisdiction, without prejudice to any future application for reexamination which may be made. None of the conditions precedent envisaged by the Act have been satisfied, i.e. no inquiry held, no letter of the Minister informing the applicant of his decision. Riveros-Melo, Manuel Eduardo v. M.E.I. (F.C.A., no. A-468-78), Pratte, Urie, MacKay, 23rd October 1978 (not yet reported).



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 4

Date June 29, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## DEPORTATION ORDERS

### 4.1 Winston George Wynter v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - LATE FILING OF AN APPEAL - TRANSITIONAL - JURISDICTION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 27(1), 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11 - IMMIGRATION APPEAL BOARD RULES, R. 4(2) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

### 4.2 Michael Ganci v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - PERSON CONVICTED OF SEVERAL CRIMES - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (iii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72(1)(a), (b) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 144, 145.

### 4.3 Linneth Moore v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(a), 27(1)(e), 72(1)(b) - IMMIGRATION REGULATIONS, 1978, S. 12.

### 4.4 Jaswinder Kaur Grewal v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE OR MISLEADING INFORMATION - WHETHER THE CEREMONY IS A BETROTHAL OR A MARRIAGE - CONFLICTING EVIDENCE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72(1)(a), (b), 75(1)(a), 76(1).

## SPONSORSHIPS

### 4.5 Roy James Allen v. M.E.I.

SPONSORSHIP - SPONSOREE NOT FREE TO MARRY - FOREIGN LAW - PROOF - IMMIGRATION REGULATIONS, PART I, S. 31(2)(b) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(d).

### 4.6 Balraj Singh Dhillon v. M.E.I.

SPONSORSHIP - RELATIONSHIP AND AGE OF THE SPONSOREE - EVIDENCE.

EVIDENCE - SPONSORSHIP - RELATIONSHIP AND AGE OF THE SPONSOREE - IMMIGRATION REGULATIONS, PART I, S. 31(1)(h).

### 4.7 Rajinder Singh Grewal v. M.E.I.

SPONSORSHIP - AGE OF ONE OF THE SPONSOREE, THE FATHER - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, S. 5(1).

### 4.8 Makhan Singh Mann v. M.E.I.

SPONSORSHIP - CANADIAN DIVORCE - VALIDITY OF SUBSEQUENT FOREIGN MARRIAGE - APPLICABLE LAW - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79(2)(a), 125(3) - HINDU MARRIAGE ACT, S. 15.

### 4.9 Patricia Lynn Dawson v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID AND SUBSISTING VISA - ADMISSION OF EVIDENCE RELATING TO THE CRIMINAL RECORD OF THE APPELLANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 79(2)(a), (b).

### 4.10 Bhupinder Singh Power v. M.E.I.

SPONSORSHIP - ARRANGED MARRIAGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), (p), 22, 63(1) - IMMIGRATION REGULATIONS, PART I, SS. 28(1), 31(2), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(b).

4.11 Harbans Kaur Sidhu v. M.E.I.

SPONSORSHIP - AGE OF SPONSOREE - AUTHENTICITY OF DOCUMENTS PROVIDED - PROOF BY AFFIDAVIT - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(d), 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

4.12 René D. Boisvert v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE NOT IN POSSESSION OF A VALID VISA - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79(2)(b), (3).

4.13 Huguette Fortier-Pierre v. M.E.I.

SPONSORSHIP - REASONS FOR REFUSAL MUST BE COMMUNICATED TO THE SPONSOR AND SPONSOREE - MARRIAGE OF CONVENIENCE - PUBLIC CHARGE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(h), (t) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3) - IMMIGRATION REGULATIONS, 1978, S. 41(1).

REFUGEES

4.14 Selahattin Sevketoğlu v. M.E.I.

REFUGEE CLAIM - APPELLANT - ALREADY ACCEPTED IN ANOTHER COUNTRY AS A REFUGEE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 7(1)(c), 18(1)(e)(vi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(2), 14, 15.

4.15 Rodolfo Joel Garcis Orellana v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP DISCREPANCIES IN THE EVIDENCE PRODUCED - CREDIBILITY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14(b) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

4.16 William Cunningham Hart Jr. v. M.E.I.

REFUGEE CLAIM - MEMBER OF A PARTICULAR SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 45(1), 45(5), 70(1), 71(1) - IMMIGRATION REGULATIONS, 1978, S. 40(1).

4.17 Agnieszka Wieckowska v. M.E.I.

REFUGEE CLAIM - APPLICATION DEFECTIVE - WAS NOT ACCOMPANIED BY THE DECLARATION UNDER OATH - LETTER OF REFUSAL NOT SIGNED BY THE MINISTER IS A NULLITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), (5), 70(1), (2).

4.18 Victor Manuel Hernandez Morales v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - TRANSITIONAL - CREDIBILITY - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 7(1)(c), 18(1)(e)(vi), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

4.19 Luis Encalada Ferrer, his wife Alejandrina Brito Gonzalez Del Carmen Encalada and their two children v. M.E.I.

REFUGEE - REDETERMINATION - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70(2), 71(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11.

MOTION FOR REOPENING APPEAL

4.20 Surjit Singh Suri v. M.E.I.

REOPENING - APPLICANT PHYSICALLY DEPORTED - NON EXISTENCE OF NEW EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 51, 72(1)(b), (2)(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14, 15(1) - FEDERAL COURT ACT, R.S. 1970, C. 10, S. 28(1).

#### 4.1 Winston George Wynter v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - LATE FILING OF AN APPEAL - TRANSITIONAL - JURISDICTION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 27(1), 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11 - IMMIGRATION APPEAL BOARD RULES, R. 4(2) - INTERPRETATION ACT, R.S.C. 1970, C. I-23.

The appellant filed under the Immigration Act, 1952, a notice of appeal after the imposed and mandatory time limit provided in Rule 4(2) of the Immigration Appeal Board Rules (repealed). He contends that the Board is not any more bound by the aforesaid jurisprudence because of the coming into force on April 10th, 1978 of the Immigration Act, 1976.

Coram: J.P. Houle (Vice-Chairman), R. Tremblay, E. Teitelbaum Appeal heard: in Montreal, November 9th, 1978 Judgment pronounced: November 10th, 1978 Reasons by: J.P. Houle (4 pp.), concurred in by U. Benedetti and D. Petrie Language of reasons: available in English and French Docket no. 78-1083 Counsel: J. Grey, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

Held (3-0) Appeal dismissed for want of jurisdiction; there is nothing in the Act nor in the Interpretation Act which would interpret section 125(3) of the Immigration Act, 1976 as creating a new right of appeal or as to revive a defunct one. The Board must comply with the time limitations set down in rule 4(2) and has no jurisdiction to waive its own rules and accept an appeal filed after the time limit therein. In the matter of Holocek, Jaroslav between M.M.I. and I.A.B. (F.C.T.D.), Gibson, 9th June 1975 (not yet reported); In the matter of Holocek, Jaroslav between M.M.I. and I.A.B. (F.C.A., no. A-382-75), Urie, 12th November 1975 (not yet reported).

#### 4.2 Michael Ganci v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - PERSON CONVICTED OF SEVERAL CRIMES - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (iii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72(1)(a), (b) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 144, 145.

The appellant, on his arrival in Canada, was granted landed status. He was convicted for several crimes under the Criminal Code including rape and was ordered deported under the Immigration Act, 1952. There are similar provisions pursuant to section 27(1)(d) of the Immigration Act, 1976, for which the appellant would be ordered deported.

Coram: A.B. Weselak (Vice-Chairman), D. Petrie, E. Teitelbaum, Appeal heard: in Toronto, November 22, 1978 Judgment pronounced: November 22, 1978 Reasons by: E. Teitelbaum (5 pp.), concurred in by A.B. Weselak and D. Petrie Language of reasons: available in English and French Docket no.: 77-9422 Counsel: D.M. Greenbaum, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

Held (3-0) Appeal dismissed, order of deportation valid in law, there is no basis for granting special relief.

#### 4.3 Linneth Moore v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(a), 27(1)(e), 72(1)(b) - IMMIGRATION REGULATIONS, 1978, S. 12.

The appellant, a permanent resident, was ordered deported on the ground that she was granted landing by reason of misrepresentation of a material fact in that she did not reveal the fact that she was married, and showed herself to be single on the application. She testified that she was assisted in the filling out of her application and that she had told the lady assisting her that she was married but nevertheless the box of the form requiring the name of "spouse" bore the symbol N/A i.e. not applicable. She signed her maiden name to the application and retained her passport in her maiden name.

Coram: J.V. Scott (Chairman), E. Teitelbaum, D. Petrie Appeal heard: in Ottawa, November 30, 1978 Judgment pronounced: December 6, 1978 Reasons by: J.V. Scott (4 pp.), concurred in by E. Teitelbaum and D. Petrie Language of reasons: available in English and French Docket no. 78-3016 Counsel: S. Leikin, Barrister and Solicitor, for the appellant; C. Goodes, Esq., for the respondent.

Held (3-0) Appeal dismissed, no sufficient grounds for granting a special relief. A prospective immigrant must disclose the existence of dependants to the Canadian Immigration authorities and it is no excuse to say that the question was never directly asked by an Immigration Officer. A spouse is a dependant within the meaning of the regulations, whether economically dependent or not. Mens rea is not an element of section 27(1)(e) of the Immigration Act, 1976. Campbell, Beverley v. M.E.I. (I.A.B. 77-9476), Weselak, Benedetti, Petrie, 2nd May 1978 (not yet reported).

#### 4.4 Jaswinder Kaur Grewal v. M.E.I.

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE OR MISLEADING INFORMATION - WHETHER THE CEREMONY IS A BETROTHAL OR A MARRIAGE - CONFLICTING EVIDENCE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72(1)(a), (b), 75(1)(a), 76(1).

The appellant, a permanent resident, was ordered deported on the ground that she came to Canada by reason of false and misleading information. She, when she was sponsored by her brother, declared herself as being single and it is alleged that she was already married in India before she first came to Canada. There is conflicting evidence to the effect that the ceremony the couple went through at that time, was only a betrothal not a marriage, the marriage only took place when she returned to India more than six months after she had been admitted into Canada. After that second ceremony, she came back to Canada, her husband came to meet her as a visitor and a Canadian child was born.

Coram: C.M. Campbell, (Vice-Chairman), D. Petrie, G. Glogowski, Appeal Heard: in Vancouver, October 20, 1978 Judgment pronounced: December 19, 1978 Reasons by: C.M. Campbell (11 pp.), concurred in by D. Petrie Dissenting reasons: F. Glogowski (2 pp.) Language of reasons: available in English and French Docket No.: 78-6104 Counsel: R.O. Rothe, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

Held (2-1) Appeal dismissed. The appellant is married with a child and she lied on her application form for permanent residence. Her husband is in Canada as a visitor, he entered this country as a visitor by choice when, as her husband, he could have been sponsored by the appellant and granted landing, also her evidence, is that he did not intend remaining in Canada.

F. Glogowski (dissenting):

On the evidence adduced at the inquiry and at the hearing, the appellant was not married before coming to Canada but only went through the engagement ritual. The order of deportation was made in accordance with the Immigration Act and Regulations. She should have disclosed on her application form that she was betrothed or engaged. However, compassionate and humanitarian considerations exist and they would justify granting a special relief; the appellant is a landed immigrant, all her family is here, she now has a Canadian born child and with her education background, she appears to be an asset to Canada. Hilario v. M.M.I. (1978) 1 F.C. 697; M.M.I. v. Brooks (1974) S.C.C. 850.

#### 4.5 Roy James Allen v. M.E.I.

SPONSORSHIP - SPONSOREE NOT FREE TO MARRY - FOREIGN LAW - PROOF - IMMIGRATION REGULATIONS, PART I, S. 31(2)(b) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(d).

The appellant filed an application to sponsor his fiancée and her four children into Canada, which application was refused on the ground that she was not free to contract marriage because her first marriage in the Philippines was not dissolved. She produced a Court Order signed by a District Judge declaring her first husband an absentee and presumptively dead for all legal purposes. The appellant produced evidence to the effect that this Order of the Philippines Court is good against the entire world so long as it is unchanged and therefore valid in Canada.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in Vancouver, October 17, 1978 Judgment pronounced: October 19, 1978 Reasons by: C.M. Campbell (7 pp.), concurred in by F. Glogowski and D. Petrie Language of reasons: available in English and French Docket no. 77-6024 Counsel: C.L. Rigg, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal allowed on legal grounds. The appellant and the sponsoree are each free to marry in their separate jurisdictions and accordingly there are no legal impediments to their marriage one to the other.

#### 4.6 Balraj Singh Dhillon v. M.E.I.

SPONSORSHIP - RELATIONSHIP AND AGE OF THE SPONSOREE - EVIDENCE.

EVIDENCE - SPONSORSHIP - RELATIONSHIP AND AGE OF THE SPONSOREE - IMMIGRATION REGULATIONS, PART I, S. 31(1)(h).

The appellant filed an application to sponsor his parents and sisters into Canada which application was only refused in respect of one of his sister, in that she had not established her family relationship to the sponsoree and that she was under 21 years of age at the time of the application. There are no birth or school certificates in support of her age and identity and the only evidence produced are photographs of the sister and affidavits from her parents, neighbours and the mayor of the village. Also there is a testimony of an uncle that was without credibility and of his wife to the effect that their niece was born on such a date which was considered inadequate.

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti, Appeal heard: in Vancouver, December 4, 1978, Judgment pronounced: December 6, 1978, Reasons by: C.M. Campbell, (8 pp.), concurred in by U. Benedetti Dissenting reasons: A.B. Weselak (6 pp.) Language of reasons: available in English and French Docket no.: 77-7009 Counsel: B.S. Koonar, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

Held (2-1) Appeal dismissed, the affidavits prepared by members of the family and neighbours are no documentary evidence of any kind with respect to the birth date and relationship of the sponsoree and so are the recollections of the aunt.

A.B. Weselak (dissenting):

Appellant has established the age and family relationship of the sponsoree with a reasonable degree of probability and therefore, I would allow the appeal. The photographs produced of the sister is not conclusive as to the evidence of age, nevertheless, it can be used to more or less determine the age of the person. The mother's affidavit is acceptable evidence as it has been stated by various authorities that the age of a child can be proved by various methods, including the evidence of the mother. However, this document can be given varying weights as it can be suspect of being self-serving and also of recent fabrication. As for the affidavits completed by neighbours and the mayor, all of the same village, the appellant admits that when requesting these affidavits he informed the parties who furnished them with particulars of his sister's age. Therefore, very little weight can be given to them, as proof of age, however, as these people were familiar, and neighbours of the family they bear some weight as proof of the family relationship.

#### 4.7 Rajinder Singh Grewal v. M.E.I.

SPONSORSHIP - AGE OF ONE OF THE SPONSOREE, THE FATHER - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(d) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, S. 5(1).

The appellant filed an application to sponsor in Canada his parents and his two brothers which application was refused on the ground that it had not been established the father was over 60 years of age. Every documents forming the record relating to the father's age show him to be 63 years of age. The Canadian Immigration authorities rejected all these pieces of evidence, except the 1971 Voters List, on the ground that they were prepared after the sponsorship application. Subsequently, the Minister alleged but did not prove that the Voters List had been changed.

Coram: J.V. Scott (Chairman), E. Teitelbaum, C.M. Campbell Appeal heard: in Winnipeg, October 26, 1978 Judgment pronounced: December 21, 1978 Reasons by: J.V. Scott (8 pp.), concurred in by E. Teitelbaum Dissenting reasons: C.M. Campbell (5 pp.) Language of reasons: available in English and French Docket no. 78-6075 Counsel: R.G. Martens, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (2-1) Appeal allowed on legal grounds. Taking the documents filed as a whole, the family composition, which was never contested, and the cumulative effect of various "affidavits" for what they are worth, together with the total failure of proof that the Voters List was changed, and if so, in what direction, with some reservations, the conclusion is that the appellant has satisfied the burden of proof lying on him. Grewal, Nasib Kaur v. M.E.I. (I.A.B. 77-3092), Glogowski, Tremblay, Teitelbaum, 10th August 1978 (not yet reported).

C.M. Campbell (dissenting):

Appeal dismissed, the age of the father had not been established as having been over sixty years of age at the date of application and that in consequence his son, a brother of the appellant who was over twenty-one years of age when the Immigration Act, 1976 was proclaimed was not a member of the family class on that date and is inadmissible.

#### 4.8 Makhan Singh Mann v. M.E.I.

SPONSORSHIP - CANADIAN DIVORCE - VALIDITY OF SUBSEQUENT FOREIGN MARRIAGE - APPLICABLE LAW - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79(2)(a), 125(3) - HINDU MARRIAGE ACT, S. 15.

The appellant, a Canadian citizen of Indian descent and a Hindu, divorced his Canadian wife and eight months later married, in India, the person whom he is sponsoring. The issue of the appeal is whether he is validly married to that person since according to the Hindu Marriage Act, a condition precedent to the validity of a remarriage is a waiting period of one year after a divorce.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Vancouver, January 17, 1979 Judgment pronounced: January 17, 1979 Reasons by: F. Glogowski (4 pp.), concurred in by C.M. Campbell and R. Tremblay Language of reasons: available in English and French Docket no.: 78-6064 Counsel: U. Dosanjh, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

Held (3-0) Appeal allowed on legal grounds. The law governing the capacity to marry is the law of the domicile of the person concerned. Here the sponsor was domiciled in Canada and by Canadian law he was free to marry at any time. Reed v. Reed 6 D.L.R. (3d) 617.

#### 4.9 Patricia Lynn Dawson v. M.E.I.

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID AND SUBSISTING VISA - ADMISSION OF EVIDENCE RELATING TO THE CRIMINAL RECORD OF THE APPELLANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 79(2)(a), (b).

The appellant filed an application to sponsor her husband into Canada, which application was refused on the ground that her husband had entered Canada without having obtained a visa.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay, Appeal heard: in Vancouver, January 18, 1979 Judgment pronounced: January 18, 1979 Reasons by: C.M. Campbell (4 pp.), concurred in by F. Glogowski and R. Tremblay Language of reasons: available in English and French Docket no. 78-6174 Counsel: A.G. Sandilands, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal dismissed. The criminal record of the appellant was accepted as evidence since, when dealing with the equity provisions of the Immigration Act, it is essential the Board know fully the background of the appellant. But, in this instance, the issue is not the criminal record of the appellant, but rather, her relationship with her husband. The marriage relationship does not justify the granting of special relief.

#### 4.10 Bhupinder Singh Power v. M.E.I.

SPONSORSHIP - ARRANGED MARRIAGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), (p), 22, 63(1) - IMMIGRATION REGULATIONS, PART I, SS. 28(1), 31(2), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(b).

The appellant filed an application to sponsor his wife in Canada which application was refused on the ground that she was not in possession of a valid visa. The marriage was a marriage arranged according to the Indian tradition and apparently when the fiancée arrived in Canada, the appellant was no longer willing to marry her. However, the marriage was celebrated, an annulment was granted but an appeal from the annulment was successful and the sponsorship reinstated. Although the marriage was never consummated.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Vancouver, January 16, 1979 Judgment pronounced: January 18, 1979 Reasons by: C.M. Campbell (6 pp.), concurred in by F. Glogowski and R. Tremblay Language of reasons: available in English and French Docket no.: 78-6034 Counsel: R.G. Heath, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

Held (3-0) Appeal allowed on humanitarian and compassionate grounds for the sponsoree because having come to Canada for marriage and having been rejected if returned to India, the rest of her life would be one of humiliation and shame. She was the victim of the appellant's bad intent, indeed in bringing her to Canada as a visitor rather than his fiancée, he established for himself an escape from the obligation of marrying her.

#### 4.11 Harbans Kaur Sidhu v. M.E.I.

SPONSORSHIP - AGE OF SPONSOREE - AUTHENTICITY OF DOCUMENTS PROVIDED - PROOF BY AFFIDAVIT - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(d), 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

The appellant filed an application to sponsor in Canada her father, mother and two brothers. The refusal of the application refers only to one of her brothers, on the ground that he was not under 21 at the time of the application. There is no birth certificate and the documents provided by the school, in the Punjab, were not acceptable by the visa officer, he had reason to believe the school did not exist. At the hearing, the appellant filed the affidavit of a member of the British Columbia Bar stating that he went in the Punjab, India and photographed the building marked "Modern Basic School" from which the authenticity of the documents is contested. Also he had a letter from the principal of the school verifying the school records of the sponsoree and showing his birth date making him under 21 at the time of the application.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Vancouver, January 25, 1979 Judgment pronounced: January 26, 1979 Reasons by: C.M. Campbell (3 pp.), concurred in by F. Glogowski and R. Tremblay Language of reasons: available in English and French Docket no. 77-6068 Counsel: B. Sharma, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

Held (3-0) Appeal allowed on legal grounds. Although, there was much conflicting, confusing and deceptive evidence, the evidence in the affidavit produced is accepted.

#### 4.12 René D. Boisvert v. M.E.I.

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE NOT IN POSSESSION OF A VALID VISA - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79(2)(b), (3).

The appellant filed an application to sponsor his wife into Canada which application was refused on the ground that the marriage was one of convenience and that the sponsoree had no valid visa. The appellant met his wife in Haiti, at his request she came for a visit to Canada, he married her after obtaining his divorce.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay **Appeal heard:** in Montreal, December 7, 1978 **Judgment pronounced:** February 5, 1979 **Reasons by:** R. Tremblay (5 pp.), concurred in by J.-P. Houle and F. Glogowski **Language of reasons:** available in English and French **Docket no.:** 78-1062 **Counsel:** G. Sciortino, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal dismissed on law and equity. There exist no humanitarian and compassionate grounds to grant a special relief. The couple only cohabitated for a period of a month after their marriage, the sponsoree is now living with a girl friend and said the reason why she left her husband was because he had started to drink again, it is very unlikely that the couple will resume life together. McDivitt v. M.M.I. 11 I.A.C. 369; Ho v. M.M.I. 8 I.A.C. 128.

#### 4.13 Huguette Fortier-Pierre v. M.E.I.

SPONSORSHIP - REASONS FOR REFUSAL MUST BE COMMUNICATED TO THE SPONSOR AND SPONSOREE - MARRIAGE OF CONVENIENCE - PUBLIC CHARGE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(h), (t) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3) - IMMIGRATION REGULATIONS, 1978, S. 41(1).

The appellant filed an application to sponsor her husband into Canada which application was refused by alleging a marriage of convenience between the sponsor and the sponsoree. Although, the record of the case makes reference to a letter addressed to the sponsoree (not the sponsor) in which he is informed that his application is refused because he does not meet the requirements of the Act pursuant to section 5(t) of the Immigration Act, 1952, he was never informed of the requirements he should have met. Also in a memorandum from the Canadian Embassy in Haiti to the Regional office of Immigration in Quebec, there were allegations of a marriage of convenience and of the sponsoree purportedly being a public charge if admitted into Canada; this last ground appeared not to have been communicated to either the sponsor or the sponsoree.

**Coram:** J.-P. Houle (Vice-Chairman) F. Glogowski and R. Tremblay, **Appeal heard:** in Montreal, December 7, 1978 **Judgment pronounced:** February 7, 1979 **Reasons by:** F. Glogowski (5 pp.), concurred in by J.-P. Houle and R. Tremblay **Language of reasons:** available in English and French **Docket no.** 78-1067 **Counsel:** P. Duquette, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

**Held** (3-0) Appeal allowed on legal grounds. The purpose of section 79(1)(b) of the Immigration Act, 1976, and section 41(b) of the Immigration Regulations, 1978 is clearly to enable and appellant to know the case she has to meet. Therefore, the reasons for the refusal must be given in intelligible terms and follow the Act and the Regulations.

#### 4.14 Selahattin Sevketoğlu v. M.E.I.

REFUGEE CLAIM - APPELLANT - ALREADY ACCEPTED IN ANOTHER COUNTRY AS A REFUGEE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 7(1)(c), 18(1)(e)(vi), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(2), 14, 15.

The appellant, a Cypriot of Turkish origin, arrived in Canada as a visitor and remained here without reporting to the authorities until a year after he had arrived at which time he claimed refugee status. Before coming into Canada, he went to Turkey and it is with a Turkish passport valid for 6 months for the purpose of

travelling that he arrived here. He had apparently obtained in Turkey proof of residence stating that he was a refugee and that he was stateless. He knew that, on arrival, he had to explain why he had been issued the passport but instead of doing so, he only requested whatever period of time he could be allowed to stay.

Coram: F. Glogowski (Vice-Chairman), U. Benedetti and R. Tremblay Appeal heard: in Toronto, July 24, 1978 Judgment pronounced: July 24, 1978 Reasons by: U. Benedetti (6 pp.), concurred in by R. Tremblay Dissenting reasons: F. Glogowski (2 pp.) Language of reasons: available in English and French Docket no.: 78-9065 Counsel: T. Lobu, Esq., for the appellant; W.A. MacIntyre, Esq., for the respondent.

Held (2-1) Appeal dismissed, execution of the order of deportation directed. There is no reasonable grounds for believing that the appellant is a refugee protected by the Convention. He had been accepted in Turkey as a refugee and he had steady employment there. He did not suffer any persecution or harassment while in Turkey and could obtain a passport to travel in North America without difficulty.

F. Glogowski (dissenting).

Appeal dismissed in law but allowed on equitable grounds, there is sufficient evidence to grant special relief. The appellant though possibly not a refugee in the strict sense of the Convention, might suffer unusual hardship if returned to Turkey. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Houle, Legaré, Glogowski, 12th April 1978 (not yet reported).

#### 4.15 Rodolfo Joel Garcis Orellana v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL GROUP DISCREPANCIES IN THE EVIDENCE PRODUCED - CREDIBILITY - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 22 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14(b) - IMMIGRATION REGULATIONS, PART I, S. 28(1).

The appellant, a citizen of Chile, filed a claim to refugee status on the ground that he was a member of a political party, and due to his active membership in that group had suffered multiple physical and mental harassments after the coup in 1973.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum, Appeal heard: in Toronto, September 7, 1978 Judgment pronounced: September 12, 1978 Reasons by: U. Benedetti (7 pp.), concurred in by A.B. Weselak and E. Teitelbaum Language of reasons: available in English and French Docket no. 78-9096 Counsel: M. Obradovich, Esq., for the appellant; W. MacIntyre, Esq., for the respondent.

Held (3-0) Appeal dismissed, execution of the order of deportation directed. The appellant is not a refugee protected by the Convention. The appellant testified that he had applied in Chile for admission to Canada as an immigrant and been refused; although he stated he had been obliged to live clandestinely in Chile, the evidence was that he was a musician playing regularly in public places there. He was not a credible witness. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Houle, Legaré, Glogowski, 12th April 1978 (not yet reported).

#### 4.16 William Cunningham Hart Jr. v. M.E.I.

REFUGEE CLAIM - MEMBER OF A PARTICULAR SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 45(1), 45(5), 70(1), 71(1) - IMMIGRATION REGULATIONS, 1978, S. 40(1).

The applicant first arrived in Canada as a visitor. He then claimed refugee status on the basis of his fear of persecution because of his membership in a particular social group, namely Viet Nam veterans.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie Appeal heard: in Toronto, November 1, 1978 Judgment pronounced: November 1, 1978 Reasons by: D. Petrie (4 pp.), concurred in by A.B. Weselak and U. Benedetti Language of reasons: available in English and French Docket no.: 78-9179

Held (3-0) Application refused to proceed, appellant determined not to be a Convention refugee. On the evidence, there are no reasonable grounds to believe that the claim could upon the hearing of the application, be established; indeed the claimant was not escaping the persecution of his government but he was leaving a difficult personal situation which hindered his adjustment, a changed environment was available to him else where in the United States.

4.17 Agnieszka Wieckowska v. M.E.I.

REFUGEE CLAIM - APPLICATION DEFECTIVE - WAS NOT ACCOMPANIED BY THE DECLARATION UNDER OATH - LETTER OF REFUSAL NOT SIGNED BY THE MINISTER IS A NULLITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), (5), 70(1), (2).

The applicant filed a redetermination of her claim to refugee status, which application was never perfected since it was not accompanied by a declaration under oath.

Coram: J.V. Scott (Chairman), J.-P. Houle, R. Tremblay Appeal heard: in Montreal, November 6, 1978 Judgment pronounced: November 6, 1978 Reasons by: J.V. Scott (4 pp.) concurred in by J.-P. Houle and R. Tremblay Language of reasons: available in English and French Docket no. 78-1086 Counsel: J.H. Grey, Barrister and Solicitor, for the applicant.

Held (3-0) Application refused to proceed, this matter was never dealt with on its merits, the application neither contained nor was accompanied by the "declaration under oath" referred to in that section. The letter of refusal purporting to be in accordance with section 45(5) of the Immigration Act, 1976 is a nullity because signed by the Registrar of the Refugee Status Advisory Committee and not signed by the Minister. Pierre-Paul v. M.M.I. 11 I.A.C. 118/130.

4.18 Victor Manuel Hernandez Morales v. M.E.I.

REFUGEE CLAIM - MEMBER OF A POLITICAL PARTY - TRANSITIONAL - CREDIBILITY - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 7(1)(c), 18(1)(e)(vi), (2) - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2).

The appellant claimed refugee status on the ground that he was an active supporter of the Socialist Party in Guatemala and that after the Socialist Party fell from power, he was arrested several times, interrogated and according to his testimony savagely beaten.

Coram: J.V. Scott (Chairman), R. Tremblay, E. Teitelbaum Appeal heard: in Montreal, December 1, 1978 Judgment pronounced: January 24, 1979 Reasons by: J.V. Scott (9 pp.), concurred in by R. Tremblay and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-1015 Counsel: W.G. Morris, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

Held (3-0) Appeal dismissed, execution of the order of deportation directed. The appellant is not a refugee protected by the Convention and never was one. The declaration in support of his refugee claim was made one day after his inquiry, during which he stated that there was no reason why he could not return to Guatemala. He remained in Canada illegally for nearly five years without endeavouring to regularize his status and he was not a credible witness at the hearing of his appeal. Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Houle, Legaré, Glogowski, April 20, 1978 (not yet reported).

4.19 Luis Encalada Ferrer, his wife Alejandrina Brito Gonzalez Del Carmen Encalada and their two children v. M.E.I.

REFUGEE - REDETERMINATION - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70(2), 71(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S.11.

The appellant, his wife and children claim refugee status on the ground that they were subject of persecution that obliged them to leave Chile. They left Chile and went to Spain where they stayed and worked for almost two years before coming into Canada.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay, E. Teitelbaum Appeal heard: in Montreal, November 7, 1978 Judgment pronounced: November 10, 1978 Reasons by: J.P. Houle (5 pp.), concurred in by R. Tremblay and E. Teitelbaum Language of reasons: available in English and French Docket no.: 78-1092

Held (3-0) Application refused to proceed; the applicants are not refugees protected by the Convention. There was both evidence of persecution; although the female applicant was a member of the Communist Party, the male applicant was not active in politics; nor is there any proof that they were members of a particular social group. Though surrounded by informers, their situation was no worse than that of thousands of others in Chile.

#### 4.20 Surjit Singh Suri v. M.E.I.

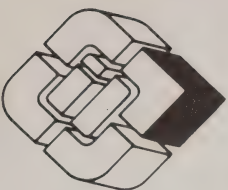
REOPENING - APPLICANT PHYSICALLY DEPORTED - NON EXISTENCE OF NEW EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, SS. 51, 72(1)(b), (2)(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, c. I-3, SS. 14, 15(1) - FEDERAL COURT ACT, R.S. 1970, c. 10, S. 28(1).

The applicant is asking the reopening of the appeal on two grounds: (1) that he will raise points of law not considered at the hearing, the determination of which are crucial for the validity of the deportation order; (2) that he has evidence not otherwise available and presented at the hearing.

Coram: J.V. Scott (Chairman), E. Teitelbaum, F. Glogowski Appeal heard: in Ottawa, November 30, 1978 Judgment pronounced: January 16, 1979 Reasons by: J.V. Scott (5 pp.), concurred in by E. Teitelbaum and F. Glogowski Language of reasons: available in English and French Docket no.: 76-9361 Counsel: Mr. E. Binavince, Barrister and Solicitor, for the applicant; M. Bhabha, Esq., respondent.

Held (3-0) Motion dismissed for want of jurisdiction; the appellant's arguments related to issues which were before the Board at the hearing of the appeal, or if they were not, could have been raised at the hearing, also the Board's jurisdiction had ceased when the deportation order was executed, indeed the applicant was physically deported at the date of the hearing. Grillas v. M.M.I. (1972) S.C.R. 577, 23 D.L.R. (3d) 1; Chan et al. v. M.M.I. 6 I.A.C. 429; Yeung v. M.M.I. 8 I.A.C. 265; Lal v. M.M.I. (1972) F.C. 1017; Douglas, Eric Byron v. M.M.I. (I.A.B. 73-22334), Scott, Legaré, Glogowski, 14th October 1977 (not yet reported); Douglas, Eric Byron v. M.M.I. (F.C.A., no. A-784-77), Heald, Urie, Kelly, 23rd February 1978 (not yet reported).





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 5

Date August 3, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## DEPORTATION ORDERS

Lamprey-Drake, Sam Young v. Minister of Employment and Immigration .....	5.1
Minister of Employment and Immigration v. Byers, Warren Henry .....	5.2

## SPONSORSHIPS

Gill, Sukhdev Singh v. Minister of Employment and Immigration .....	5.3
Lail, Narinder Singh v. Minister of Employment and Immigration .....	5.4
Pandher, Mukhtiar Kaur v. Minister of Employment and Immigration .....	5.5
Sangha, Harbans Kaur v. Minister of Employment and Immigration .....	5.6
Athwal, Gurmej Kaur v. Minister of Employment and Immigration .....	5.7
Tremblay-Singh, Evelyne v. Minister of Employment and Immigration .....	5.8
Garcha, Jarnail Singh v. Minister of Employment and Immigration .....	5.9
Josue, Germaine v. Minister of Employment and Immigration .....	5.10
Dhariwal, Daljit Singh v. Minister of Employment and Immigration .....	5.11
Goyette, Michel André v. Minister of Employment and Immigration .....	5.12
Ahearn, Maureen Joan v. Minister of Employment and Immigration .....	5.13
Sharma, Praveena v. Minister of Employment and Immigration .....	5.14
Singh, Gurdeep v. Minister of Employment and Immigration .....	5.15
Purba, Preetam v. Minister of Employment and Immigration .....	5.16
Minister of Employment and Immigration v. Narang, Manohar Lal .....	5.17

## JURISDICTION OF BOARD

Minister of Employment and Immigration v. Byers, Warren Henry .....	5.2
Pandher, Mukhtiar Kaur v. Minister of Employment and Immigration .....	5.5
Purba, Preetam v. Minister of Employment and Immigration .....	5.16
Minister of Employment and Immigration v. Narang, Manohar Lal .....	5.17
Patel, Mahendrakumar Haribhai v. Minister of Employment and Immigration .....	5.18
Megalli, Mahmoud Taher v. Minister of Employment and Immigration .....	5.19

## MOTIONS BY THE MINISTER CONTESTING THE RIGHT OF APPEAL

Purba, Preetam v. Minister of Employment and Immigration .....	5.16
Minister of Employment and Immigration v. Narang, Manohar Lal .....	5.17

## EVIDENCE

Sangha, Harbans Kaur v. Minister of Employment and Immigration .....	5.6
--	-----

## REMOVAL ORDER

Patel, Mahendrakumar Haribhai v. Minister of Employment and Immigration .....	5.18
---	------

## MOTION FOR LEAVE TO FILE AN APPLICATION FOR REDETERMINATION OF A REFUGEE CLAIM

Megalli, Mahmoud Taher v. Minister of Employment and Immigration .....	5.19
--	------

## MOTION FOR REOPENING THE INQUIRY

Megalli, Mahmoud Taher v. Minister of Employment and Immigration .....	5.19
--	------

## DEPARTURE NOTICE

Aviles, Jorge Hernan v. Minister of Employment and Immigration .....	5.20
--	------

5.1 Lamptey-Drake, Sam Young v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CLAIM TO CANADIAN CITIZENSHIP - RETURNING RESIDENT - CREDIBILITY - BURDEN OF PROOF - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C.1-2, SS.2, 7(1),(2), 18(1)(e)(vi), (2), 25-IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, SS. 11(1)(d), (2), (3), 14, 15(1)(b) - IMMIGRATION REGULATIONS, Part 1, SS. 3A(1), 36

The appellant claims Canadian citizenship on the basis that he came with his mother to Canada when he was 17 years old to live with his father. Despite this claim, when he last came into Canada, he claimed to be a returning resident, and according to his testimony he was admitted to Canada as having this status.

Held, appeal dismissed, execution of the order of deportation directed. The appellant was not a returning resident, since he has failed to establish that he was ever "previously landed in Canada". On the other hand, there is no evidence that he came into Canada illegally or without status - quite the contrary, since on his own testimony he was examined at the port of entry. Since he is neither a landed immigrant or a citizen, he must have been admitted as a non-immigrant.

Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Glogowski, Houle, Legaré, 12th April 1978 (not yet reported); Albright v. M.M.I. 4 I.A.C. 404; Yeung, Ng Woon v. M.M.I. (I.A.B. 72-3481), Glogowski, Legaré, Byrne, 18th August 1972 (not yet reported); Chaney, James Paul v. M.M.I. (I.A.B. 71-3201), J.C.A. Campbell, Cardin, Legaré, 10th June 1971 (not yet reported).

Coram:	J.V. Scott (Chairman), C.M. Campbell, E. Teitelbaum	Appeal heard:	in
	Winnipeg, August 15, 1978	Judgment pronounced:	September 29, 1978
	J.V. Scott, (11 pp.), concurred in by E. Teitelbaum, C.M. Campbell	Reasons by:	
78-6091	Counsel at hearing: C.J. Dickey, Esq., for the respondent.	Docket no.	

5.2 Minister of Employment and Immigration v. Byers, Warren Henry

DEPORTATION ORDER - PERMANENT RESIDENT - JURISDICTION OF BOARD - APPEAL BY THE MINISTER

JURISDICTION OF BOARD - APPEAL BY THE MINISTER - DELIVERY AND SERVICE OF THE NOTICE OF APPEAL NOT WITHIN THE TIME LIMIT - WHETHER THERE WAS PROPER SERVICE WITHIN THE MEANING OF THE IMMIGRATION APPEAL BOARD RULES - IMMIGRATION ACT, R.S.C. 1970, C.1-2, S. 18(1)(e)(viii) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S. 12 - IMMIGRATION APPEAL BOARD RULES, RULES 5, 25 - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, S.S. 73, 128(1) - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 4, 12 to 16

The Counsel for the respondent challenges the jurisdiction of the Board to entertain the appeal as he stated that there had not been delivery and service of a Notice of Appeal upon the respondent within 30 days of the date of the decision being made by the Special Inquiry Officer in the earlier proceedings and, therefore, the appeal had not been validly launched. He further stated that service of the documents upon the respondent's wife cannot be considered as personal service and, as a result, there had not been proper service upon the respondent of the Notice of Appeal.

Held, appeal dismissed for want of jurisdiction. There is nothing before the Board, there was not proper personal service in accordance with either the old or the new Immigration Appeal Board Rules. The service in this case was upon the wife and the process server neither handed the Notice of Appeal to the respondent nor saw the respondent. This is a necessary prerequisite to institute an appeal and must be strictly complied with. The mere handing of an envelope to the person concerned without a description of its contents can be fatal as proper personal service, as the process server should advise the person concerned of the documents with which he is being served.

Regina v. Dennis (1958) 24 W.W.R. 88; Regina v. Dennis [1958] S.C.R. 473; Regina v. Terrabain (1965) 50 W.W.R. 560; Re Rex V. Speirs [1923-4] 55 O.L.R. 290; Re Avery [1952] O.R. 192; Re Consiglio et al. [1971] O.R. Vol. 3, 798; Jackson v. Newman [1939] 2 D.L.R. 729.

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti Appeal heard: in Vancouver, November 27, 1978 Judgment pronounced: March 5, 1979 Reasons by: A.B. Weselak, (11 pp.) concurred in by C.M. Campbell, and U. Benedetti Docket no. 78-6116 Counsel at hearing: A. Louie and C.J. Dickey, Esq., for the appellant, J.M. Hutchinson, Barrister and Solicitor for the respondent.

---

SPONSORSHIPS

5.3 Gill, Sukhdev Singh v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION OF BOARD - SPONSOR NOT EIGHTEEN YEARS OF AGE AT TIME THE SPONSORSHIP APPLICATION WAS MADE - RIGHT OF APPEAL TO BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, PART I, S. 31(1) - IMMIGRATION REGULATIONS, 1978, S.4 - INTERPRETATION ACT, R.S.C. 1970, C. I-23, S. 35

The appellant, a Canadian citizen, filed an application to sponsor his wife into Canada, which application was refused on the ground that he was not eligible to sponsor because he was not 18 years of age or over. Because he was not 18 years of age, his right of appeal to the Board was contested.

Held, appeal dismissed for want of jurisdiction. A Canadian citizen is free to come before us and argue his right of appeal. However, there is a statutory requirement under section 31(1) of the Immigration Regulations, Part I (repealed) and under section 4 of the Immigration Regulations, 1978 that the sponsor must be eighteen years of age. The appellant is not 18 years of age and he won't be 18 for three months. There is a statutory provision, therefore, that he has no right to make a sponsorship application. Since, by Statute, he is excluded from the sponsorship process, it flows, naturally that he cannot appeal within the process from which he has already been excluded.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in Winnipeg, June 16, 1978 Judgment pronounced: June 16, 1978 Reasons by: C.M. Campbell (2 pp.), concurred in by F. Glogowski and D. Petrie Docket no: 78-6062 Counsel at hearing: D. Matas, Barrister and Solicitor, for the appellant, and I. Munn, J.M. Dickey, Esq., for the respondent

---

5.4 Lail, Narinder Singh v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF ONE OF THE SPONSOREE, THE FATHER - CREDIBILITY OF THE APPELLANT - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)

The appellant filed an application to sponsor into Canada his father, mother and two sisters. The application was refused on the ground that the father did not establish that he was over 60 years of age. There are discrepancies in the documents produced as evidence of the father's age and also the appellant's testimony was found to be without credibility.

Held, appeal dismissed on legal grounds in respect of the two children. The father's age is in issue since found to have been under 60 years at the date of the sponsored application. The two children would have been admissible if the father had been found over 60 years of age at the date of the application because they were under 21 years of age then. The evidence produced consist of an affidavit concerning the father's marriage and a birth certificate which shows his date of birth as giving him more than 60 years at the date of application, also there is a Pension Payment Order giving his date of birth as being two years younger than the two above mentioned documents. This official Pension Payment Order was considered to be the most credible of the documents provided.

Held, appeal allowed on legal grounds in respect of the parents. Since the appeal is heard under the provisions of the Immigration Act, 1976, the appellant enjoys the provisions of that Act which provides that the mother and father are sponsorable regardless of age.

Coram: C.M. Campbell, (Vice-Chairman), F. Glogowski, D. Petrie, Appeal heard: in  
Vancouver, October 16, 1978 Judgment pronounced: October 17, 1978, Reasons by:  
C.M. Campbell (4 pp.), concurred in by F. Glogowski, and D. Petrie, Docket no:  
77-6067 Counsel at hearing: D.P. Pandia, Esq., for the appellant, and C.J. Dickey, Esq.,  
for the respondent.

---

5.5 Pandher, Mukhtiar Kaur v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION - AGE OF THE SPONSOREE - IMMIGRATION REGULATIONS, PART I,  
S. 36

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR NOT A CANADIAN CITIZEN - RIGHT OF  
APPEAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S. 17 - IMMIGRATION ACT,  
1976, S.C. 1976-77, C.52, S. 79(2)

The appellant filed an application to sponsor her parents, one brother and two sisters in  
Canada. The application was refused in respect to the father on the ground he did not  
establish that he was over 60 years of age at the hearing, it was established from the  
appellant's own testimony that she was not a Canadian citizen at the time of filing her  
appeal.

Held, appeal dismissed. The appellant was not a Canadian citizen when she made her  
appeal, she was without the right to file it and therefore, the Board is without  
jurisdiction to hear it.

Coram: C.M. Campbell, (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in  
Vancouver, October 19, 1978 Judgment pronounced: October 19, 1978 Reasons by:  
C.M. Campbell (Vice-Chairman), (2 pp.), concurred in by F. Glogowski and D. Petrie  
Docket no: 77-7018 Counsel at hearing: W. Beck, Barrister and Solicitor, for the  
appellant, and C.J. Dickey, Esq., for the respondent.

---

5.6 Sangha, Harbans Kaur v. Minister of Employment and Immigration

SPONSORSHIP - FAMILY RELATIONSHIP AND AGE OF ONE OF THE SPONSOREE, THE BROTHER -  
EVIDENCE

EVIDENCE - SPONSORSHIP - FAMILY RELATIONSHIP AND AGE OF ONE OF THE SPONSOREE, THE  
BROTHER - IMMIGRATION ACT, R.S.C. 1970, C. 1-2, S. 5(t) - IMMIGRATION REGULATIONS,  
PART I, S. 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S. 17 -  
IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(3)

The appellant filed an application to sponsor her mother and brother into Canada.  
The appeal is only in respect of the brother, his age and relationship with the  
appellant was not properly established. His birth was never recorded and he did not  
have an education so there are no school records. The only evidence produced  
regarding the age is an affidavit of the mother declaring her son born on such a  
date, that would make him under twenty-one years of age, and at the hearing, the  
appellant and her brother recited their recollections with respect to the birth dates  
of and age differences between members of their family. They produced no documentary  
evidence.

Held, appeal dismissed, the mother's affidavit and the testimony of other members of  
the family, all of which is self-serving, cannot be accepted as evidence with respect  
to the date of birth which took place twenty years ago "without more" to support  
their recollections.

Coram: C.M. Campbell, (Vice-Chairman), F. Glogowski, D. Petrie Appeal heard: in  
Vancouver, October 19, 1978 Judgment pronounced: October 20, 1978 Reasons by:  
C.M. Campbell, (Vice-Chairman), (4 pp.), concurred in by F. Glogowski, and D. Petrie  
Docket no: 77-7000, Counsel at hearing: D.P. Pandia, Esq., for the appellant, and  
F.D. Craddock, Esq., for the respondent.

---

5.7 Athwal, Gurmej Kaur v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE IN CANADA WITHOUT A VALID VISA - MARRIAGE OF CONVENIENCE -  
IMMIGRATION ACT, R.S.C. 1970, C. 1-2, S. 5(t) - IMMIGRATION REGULATIONS,  
PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79(2)(a), (b)

The appellant filed an application to sponsor her husband into Canada which application was refused on the ground that he was a member of a prohibited class namely a person who has been convicted of a crime involving moral turpitude and also he did not comply with the Immigration Regulations in that he was not in possession of a valid visa.

Held, appeal dismissed. There do not exist compassionate and humanitarian considerations to warrant a special relief. The sponsoree came into Canada as a visitor and overstayed the period he was allowed to stay, other than his wife he has no family, friends, or roots in the country. Similarly, the appellant has few roots in Canada and no relations other than her husband. She participated in one deception of his illegal stay in Canada in disclaiming any knowledge of him when she was interviewed by an Immigration Officer and also she married him in attempt to prevent his deportation. The appellant and her husband did not come with "clean hands".

Tzemanakis v. M.M.I. 8 I.A.C. 156.

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti Appeal heard: in  
Vancouver, December 7, 1978 Judgment pronounced: December 7, 1978 Reasons by:  
C.M., Campbell (4 pp.), concurred in by A.B. Weselak and U. Benedetti Docket no:  
77-7020 Counsel at hearing: R.O. Rothe, Barrister and Solicitor, for the appellant,  
and F.D. Craddock, Esq., for the respondent.

---

5.8 Tremblay-Singh, Evelyne v. Minister of Employment and Immigration

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE NOT IN POSSESSION OF A VALID VISA -  
CREDIBILITY - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION  
REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S.  
17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 125(3)

The appellant filed an application to sponsor her husband into Canada. The application was refused on two grounds; namely the marriage of the sponsor with the sponsoree was a marriage of convenience and the sponsoree was not in possession of a valid and subsisting visa.

Held, appeal allowed on equitable grounds. The evidence showed that the marriage was a bona fide contracted valid marriage; the sponsoree, the husband is gainfully employed, does not have any criminal record and does not constitute a menace to public security, order and peace.

Coram: J.P. Houle, (Vice-Chairman), F. Glogowski, R. Tremblay Appeal Heard: in  
Montreal, February 13, 1979 Judgment pronounced: February 13, 1979 Reasons by:  
J.P. Houle, (4 pp.), concurred in by F. Glogowski, and R. Tremblay Docket no:  
78-1077 Counsel at hearing: J. Rosenfeld, Barrister and Solicitor, for the appellant  
and J.R. St. Louis, Esq., for the respondent.

5.9 Garcha, Jarnail Singh v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREES - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S.17 - IMMIGRATION REGULATIONS, PART 1, S. 36

The appellant filed an application to sponsor his parents, two sisters, and three brothers into Canada. The application was refused under the Immigration Act, 1952 in respect of the father on the ground that he failed to prove he was over 60 years of age. The appeal was heard under the Immigration Act, 1976 and under which Act the parents are no longer subject to age limitations and, if they meet other criteria, are admissible. But under both Immigration Regulations, accompanying dependent children must be under 21 years of age.

Held, appeal dismissed with respect of one of the brother whose birthdate given shows him as being over 21. Appeal allowed in respect of the parents, and other children. Even if there are discrepancies in documents referring to two children, in each instance the dates shown bring each of these dependants within the family class.

Coram: C.M. Campbell (Vice-Chairman), D. Petrie, E. Teitelbaum Appeal heard: in Vancouver, February 26, 1979 Judgment pronounced: February 26, 1979 Reasons by: C.M. Campbell, (3 pp.), concurred in by D. Petrie and E. Teitelbaum Docket no: 77-6049 Counsel at hearing: D.P. Pandia, Esq., for the appellant and D.M. Hanbury, Esq., for the respondent.

---

5.10 Josue, Germaine v. Minister of Employment and Immigration

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79

The appellant filed an application to sponsor her husband in Canada, which application was refused on two grounds, namely that the sponsoree was not in possession of a valid visa and that the marriage was one of convenience. The basis of the latter ground for refusal is the disparity in age (30 years).

Held, appeal allowed on equitable grounds. The marriage is a valid marriage and the intention of the Act is to facilitate the reunion of families in Canada.

Coram: J.P. Houle, (Vice-Chairman), F. Glogowski, R. Tremblay Appeal heard: in Montreal, February 26, 1979 Judgment pronounced: February 26, 1979 Reasons by: J.P. Houle, (4 pp.), concurred in by F. Glogowski, and R. Tremblay Docket no: 78-1096 Counsel at hearing: J. Rosenfeld, Barrister and Solicitor, for the appellant, and M.A. Kulba, Esq., for the respondent.

---

5.11 Dhariwal, Daljit Singh v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF ONE OF THE SPONSOREE - TRANSITIONAL - GRANTING OF A SPECIAL RELIEF ONLY TO SPONSOREES WHO ARE IN THE SPONSORABLE CLASS - IMMIGRATION ACT, R.S.C. 1970, C.1-2, S 5(t) - IMMIGRATION REGULATIONS, PART 1, S. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S.17

The appellant filed an application to sponsor his parents and his three sisters into Canada. The application in respect of one of his sisters was refused on the ground that she did not established that she was under 21 at the time of the sponsorship application.

Held, appeal allowed in law, with respect of the parents and two sisters. Appeal dismissed with respect of the third sister, it was conceded that she was over 21 at the date of the application and was, therefore, not a member of the family class. The special relief can only be granted to sponsorees who in the first instance came within the sponsorable class as set out in the Regulations.

Coram: C.M. Campbell (Vice-Chairman), D. Petrie, E. Teitelbaum      Appeal heard: in  
Vancouver, February 28, 1979      Judgment pronounced: February 28, 1979      Reasons  
by: C.M. Campbell, (3 pp.), concurred in by D. Petrie and E. Teitelbaum      Docket  
no: 78-6074      Counsel at hearing: D.P. Pandia, Esq., for the appellant and  
C.J. Dickey, Esq., for the respondent.

---

5.12      Goyette, Michel André v. Minister of Employment and Immigration

SPONSORSHIP - BIGAMOUS MARRIAGE - FOREIGN DIVORCE - PROOF OF FOREIGN LAW -  
PRESUMPTION OF VALIDITY OF THE CANADIAN MARRIAGE - BURDEN OF PROOF - SPONSOREE NOT IN  
A SPONSORABLE CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant, a Canadian citizen, filed an application to sponsor his second wife into Canada, which wife he married in Canada, after having obtained a divorce in Haiti from his first wife he had married in Brussels, Belgium. The certificate of marriage issued in Montreal gives a presumption of validity to this marriage. This presumption, therefore, shifts the burden of proof of its invalidity to the respondent. The real issue of this appeal is whether the respondent satisfies the burden of proof lying on him in respect of the validity of the marriage and the invalidity of the divorce of the appellant.

Held, appeal dismissed, the sponsoree is not a member of the family class whose application may be sponsored. The respondent has sufficiently discharged the burden of proof lying on him in respect of the invalidity of the divorce in Haiti. A foreign divorce decree to be recognized in the province of Quebec must have been rendered by a court of competent jurisdiction in the eyes of Quebec Courts; incompatibility of character; the ground in which the divorce was obtained in Haiti does not exist in the Canadian Divorce Act, the appellant and the first wife were never domiciled in Haiti, and the first wife has never been represented in Haiti when the divorce proceedings took place.

Baran v. Wilensky 20 D.L.R. (2d) 440; Terry v. Terry and MacKenzie 1948 W.W.R. Vol. 2, 152; Andrash v. Andrash and Moromila 60 W.W.R. 442; Bewington (otherwise Hewitson) v. Hewitson 47 D.L.R. (3d) 510; El-Sohemy v. El-Sohemy 21 O.R. (2d) 35.

Coram: J.P. Houle, (Vice-Chairman), F. Glogowski, R. Tremblay      Appeal heard: in  
Montreal, February 9, 1979      Judgment pronounced: March 23, 1979      Reasons by:  
F. Glogowski, (7 pp.), concurred in by J.P. Houle, and R. Tremblay      Docket no.:  
78-1073      Counsel at hearing: M.A. kulba, Esq., for the respondent.

---

5.13      Ahearn, Maureen Joan v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VISA - MARRIAGE OF CONVENIENCE -  
HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77,  
C. 52, SS. 9(1), 19(2)(d), 79

The appellant filed an application to sponsor her husband into Canada which application was refused on the ground that he was not in possession of a valid visa. It appeared from an interdepartmental memorandum of the Immigration Commission that the real ground for refusal were doubts that the appellant and the sponsoree were living together as man and wife.

Held, appeal allowed on equitable grounds. The evidence adduced at the hearing and letters from several persons who know the appellant and her husband established that the marriage relationship is valid in every respect and the granting of special relief is justified.

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti Appeal heard:  
in Vancouver, March 26, 1979 Judgment pronounced: March 26, 1979 Reasons by:  
C.M. Campbell, (3 pp.), concurred in by A.B. Weselak and U. Benedetti Docket no:  
79-6005 Counsel at hearing: R.H.G. Holloway, Barrister and Solicitor, for the  
appellant, and D.M. Hanbury, Esq., for the respondent.

---

5.14 Sharma, Praveena v. Minister of Employment and Immigration

SPONSORSHIP - BIGAMOUS MARRIAGE - PROOF OF THE FIRST MARRIAGE BEING VALID AT DATE OF  
THE SECOND ONE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION  
REGULATIONS, 1978, S. 4(a)

The appellant filed an application to sponsor her husband into Canada which  
application was refused on the ground that the first marriage was not dissolved at  
the date of the second marriage in Canada.

Held, appeal dismissed in law, the evidence revealed that the sponsor and the  
sponsee were married on such a date and that the sponsee had not been divorced at  
that date. The marriage would appear to be bigamous, therefore, null and void and  
the sponsee does not fall within the family class.

Coram: A.B. Weselak, (Vice-Chairman), U. Benedetti, D. Davey Appeal heard: in  
Toronto, March 21, 1979 Judgment pronounced: April 4, 1979 Reasons by:  
A.B. Weselak, (2 pp.), concurred in by U. Benedetti and D. Davey Docket no:  
79-6072, Counsel at hearing: R.S. Chopra, Barrister and Solicitor, for the  
appellant, and M. Bhabha, Esq., for the respondent.

---

5.15 Singh, Gurdeep v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE SPONSOREE, THE FATHER - BURDEN OF PROOF - TRANSITIONAL -  
IMMIGRATION ACT, R.S.C. 1970, C. 1-2, S. 5(t) - IMMIGRATION REGULATIONS, PART 1, SS.  
31(1)(d), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S. 17 - IMMIGRATION  
ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, S.5(1)

The appellant filed an application to sponsor into Canada his parents, sister and  
brothers. The father's age is in issue, since the letter of refusal is based on the  
ground that he did not establish that he was over 60 years old at the time of the  
application. The appellant produced as evidence of his father's age, a birth  
certificate for an unnamed male child born on such a date, the marriage certificate  
of his parents, a passport, and extracts of voter's lists.

Held, appeal allowed on legal grounds. Considering the documents which are part of  
the record and the evidence adduced at the hearing of the appeal, the appellant  
sufficiently established on balance of probabilities that his father was over sixty at  
the time of the sponsorship application. As to the admission to Canada of the parents  
and of the brothers, who were still under 21 at the date of the hearing of the appeal,  
the age of the parents is no longer an issue under the Immigration Act, 1976, the age  
of the father is relevant only to the admission of the sister who was under 21 when  
the sponsorship application was made but over 21 at the date of the hearing of the  
appeal. She is admissible as an accompanying dependent since the refusal of the  
sponsorship application in respect of the father was not in accordance with the law,  
he was found to have been over 60 years old at the time of the sponsorship  
application.

Grewal, Nasib Kaur v. M.E.I. (I.A.B. 77-3092), Glogowski, Tremblay, Teitelbaum, 10th  
August 1978 (not yet reported).

Coram: J.P. Houle, (Vice-Chairman), F. Glogowski, E. Teitelbaum Appeal heard: in  
Montreal, March 14, 1979 Judgment pronounced: March 15, 1979 Reasons by:  
F. Glogowski, (4 pp.), concurred in by J.P. Houle and E. Teitelbaum Docket  
no.: 78-1060, Counsel at hearing: H. Frumkin, Barrister and Solicitor, for the  
appellant, and M.A. Kulba, Esq., for the respondent.

5.16 Purba, Preetam v. Minister of Employment and Immigration

MOTION BY THE MINISTER CONTESTING THE RIGHT OF APPEAL - SPONSORSHIP - JURISDICTION OF BOARD - RIGHT OF APPEAL

JURISDICTION OF BOARD - RIGHT OF APPEAL - MOTION BY THE MINISTER CONTESTING THE RIGHT OF APPEAL - SPONSORSHIP

Held, motion dismissed and Board has jurisdiction to hear the appeal. The respondent is a citizen of Canada and a Canadian citizen has the unqualified right of appeal against the refusal of a sponsored application. It does not appear that the Board's jurisdiction to hear an appeal where it is alleged that the person does not fall within the family class is fettered in any manner whatsoever and it also appears that where such an allegation is made by the Minister that the Board can review the facts, hear further evidence and make a determination as to whether the person falls within the family class and whether such person meets the requirements of the Act or the Regulations.

SPONSORSHIP - SPONSOREE NOT IN THE SPONSORABLE CLASS - PROOF OF ADOPTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, PART I, S. 31 (1) (f) - IMMIGRATION REGULATIONS, 1978, SS. 2, 4

The appellant filed an application to sponsor in Canada the child of his younger brother which child he states has been given to him for adoption in India. He claims he is unable to locate a record of the Registry of Adoption of the sponsoree. He claims also that when he applied for permanent residence in Canada, he filed copies of adoption papers respecting the sponsoree with the Immigration Officer. However, there does not appear to be any record of these documents. There has also been a Notice of Adoption filed in the County Court District of the Province of Nova Scotia and as at the date of the hearing of the appeal this application had not been disposed of.

Held, appeal dismissed. The appellant has not satisfactorily proved that the sponsoree was legally adopted by him in India, in 1959 or at any time, therefore, the sponsoree is not in the family class described in the Immigration Act and Regulations.

Gill, Sukhdev Singh v. M.E.I. (I.A.B. 78-6062), Campbell, Glogowski, Petrie, 16th June 1978 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), C.M. Campbell, U. Benedetti      Appeal heard: in  
Halifax, November 8, 1978      Judgment pronounced: November 8, 1978      Reasons by:  
A.B. Weselak (6 pp.), concurred in by C.M. Campbell, and U. Benedetti      Docket no:  
78-3011      Counsel at hearing: W.L. Bernhardt, Esq., for the respondent.

---

5.17 Minister of Employment and Immigration v. Narang, Manohar Lal

MOTION BY THE MINISTER CONTESTING THE RIGHT OF APPEAL - SPONSORSHIP - JURISDICTION OF BOARD - RIGHT OF APPEAL

JURISDICTION OF BOARD - RIGHT OF APPEAL - MOTION BY THE MINISTER CONTESTING THE RIGHT OF APPEAL - SPONSORSHIP

SPONSORSHIP - MOTION BY THE MINISTER CONTESTING THE RIGHT OF APPEAL - JURISDICTION OF BOARD - RIGHT OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 2, 4

The applicant, the Minister, made a motion in which he alleges that there can only be a right of appeal where there is an eligible sponsor applying for an individual who is clearly defined as a family class member and from this flows the jurisdiction of the Board.

Held, motion dismissed and Board has jurisdiction to hear the appeal. The respondent is a citizen of Canada and a Canadian citizen has the unqualified right of appeal against the refusal of a sponsored application. It does not appear that the Board's jurisdiction to hear an appeal where it is alleged that the person does not fall within the family class is fettered in any manner whatsoever and it also appears that where such an allegation is made by the Minister that the Board can review the facts, hear further evidence and make a determination as to whether the person falls within the family class and whether such person meets the requirements of the Act or the Regulations.

Gill, Sukhdev Singh v. M.E.I. (I.A.B. 78-6062), Campbell, Glogowski, Petrie, 16th June 1978 (not yet reported).

Coram: A.B. Weselak, (Vice-Chairman), C.M. Campbell, U. Benedetti      Appeal Heard: in  
Halifax, November 9, 1978      Judgment pronounced: November 9, 1978      Reasons by:  
A.B. Weselak, (4 pp.), concurred in by C.M. Campbell, and U. Benedetti      Docket no:  
78-3014      Counsel at hearing: W.L. Bernhardt, Esq., for the applicant, and  
J.W. Thompson, Barrister and Solicitor, for the respondent.

---

JURISDICTION OF BOARD

5.18      Patel, Mahendrakumar Haribhai v. Minister of Employment and Immigration

JURISDICTION OF THE BOARD - ADJUDICATOR FINDING PERSON NOT PERMANENT RESIDENT -  
REVIEW BY THE BOARD OF THE DECISION OF THE ADJUDICATOR - IMMIGRATION ACT, 1976, S.C.  
1976-77, C. 52, S. 72(1)

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION  
- OUTSIDE OF CANADA FOR MORE THAN 183 DAYS - NO RETURNING RESIDENT PERMIT -  
PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN S. 24(2) - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 51, SS. 4(1), 9(1), 19(2)(d), 20, 23(3)(c), 24, 32(5)(b),  
75(1)(a), 76(1) - IMMIGRATION REGULATIONS, 1978, S. 13(4)

The appellant was admitted as a permanent resident of Canada and left Canada for various periods either for the purpose of studying or for personal reasons, and did remain outside the country for more than 183 days. He returned without a permanent resident permit and sought admission as a returning permanent resident.

Held, appeal allowed on legal grounds and exclusion order quashed. The Board has jurisdiction to review the decision of the adjudicator under the provisions of section 24(2) of the Immigration Act, 1976 and consequently to decide the appeal pursuant to section 72(1) of the Immigration Act, 1976.

The appellant has reasonably explained his absences from Canada at various periods between 1975 and his ultimate return in 1978. The appellant has been granted landed status and did not cease to be a permanent resident pursuant to section 24 of the Immigration Act, 1976, in that he did not have the intention to abandoning Canada as his place of residence and further he had the right to come into Canada and he did not, on his return, have to be in possession of an immigrant visa as provided in section 9 of the Act.

Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, 14th June 1978 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Petrie      Appeal heard: in  
Toronto, January 8 & 9, 1979      Judgment pronounced: January 9, 1979      Reasons  
by: A.B. Weselak (6 pp.) concurred in by U. Benedetti, and D. Petrie      Docket no:  
78-9163      Counsel at hearing: D.M. Greenbaum, Barrister and Solicitor, for the  
appellant, and C. Cottle, Esq., for the respondent.

---

5.19      Megalli, Mahmoud Taher v. Minister of Employment and Immigration

MOTION FOR LEAVE TO FILE AN APPLICATION FOR REDETERMINATION OF A REFUGEE CLAIM - PERSON  
ALREADY ORDERED DEPORTED - JURISDICTION OF BOARD - ESTOPPEL

JURISDICTION OF BOARD - MOTION FOR LEAVE TO FILE AN APPLICATION FOR REDETERMINATION OF A  
REFUGEE CLAIM - PERSON ALREADY ORDERED DEPORTED - IMMIGRATION ACT, 1976, S.C. 1976-77, C.  
52, SS. 29, 45(1), (2), (4), 46(1), 48(1), 59(1), 70(1)

The applicant claims that he is stateless, and after sojourns in various Arab countries, and a period in prison in West Germany, he came to Canada, was ordered deported in 1976 and never appealed or sought to appeal from this order of deportation. The applicant's counsel sought to bring the matter within the Board's jurisdiction on the basis of a form of estoppel, namely, that the Immigration Department, by conducting an interview and submitting the applicant's claim to refugee status to the Minister, had brought the matter within section 45 of the Immigration Act, 1976, thus giving the applicant a chance to apply for redetermination of his claim pursuant to section 70 of the Act.

Held, motion dismissed. The claimant has no right to apply to the Board for redetermination and the Board has no jurisdiction to deal with it unless such claim is made during an inquiry (and is refused by the Minister), which is not the case here. The right to apply for redetermination pursuant to section 70(1) of the Act, flows from a refusal of a claim to refugee status made pursuant to section 45(1) during an inquiry. At the time he made his claim, the claimant was not the subject of an inquiry, he has already been ordered deported.

**MOTION FOR REOPENING THE INQUIRY - JURISDICTION OF BOARD - WHERE NO RIGHT OF APPEAL TO BOARD - TRANSITIONAL.**

**JURISDICTION OF BOARD - MOTION FOR REOPENING THE INQUIRY - WHERE NO RIGHT OF APPEAL TO BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 72, 73, 74 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. 1-3, S. 11(1)(c)**

Held, appeal dismissed, since the Board was never seized of an appeal, it has no jurisdiction to reopen the inquiry. The appeal referred to in section 74 of the Immigration Act, 1976 means an appeal brought under section 72 or section 73 of that Act, and it is clear that an appeal must actually have been filed with the Board before the Board's power to reopen an inquiry can be invoked. Under the scheme of the Immigration Act, 1976, the applicant had no right of appeal.

Chin v. M.M.I. 10 I.A.C. 249.

Coram: J.V. Scott(Chairman), F. Glogowski, E. Teitelbaum Appeal heard: in Vancouver, August 23, 1978 Judgment pronounced: September 29, 1978 Reasons by: J.V. Scott (5 pp.), concurred in by F. Glogowski, and E. Teitelbaum Docket no: 78-6132 Counsel at hearing: P.R. Cantillon, G. Goldstein, Barristers and Solicitors, for the applicant, C.J. Dickey, Esq., for the respondent.

---

#### DEPARTURE NOTICE

5.20 Aviles, Jorge Hernan v. Minister of Employment and Immigration

DEPARTURE NOTICE - LATE FILING OF APPEAL - JURISDICTION OF BOARD

DEPARTURE NOTICE - JURISDICTION OF BOARD

DEPARTURE NOTICE - NOTICE OF HEARING SIGNED BY COUNSEL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.2(1), 27(2)(e), 72(1), 79(1) - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 9, 38(1)

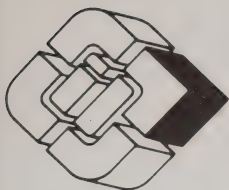
A Notice of Appeal was filed more than five days after the making of the departure notice on behalf of the appellant and signed on behalf of the appellant by his counsel.

Held, appeal dismissed for want of jurisdiction; (1) more than five days had elapsed from the making of the departure notice to the date of the Notice of Appeal (2) there is no provision for the Board to entertain an appeal from a departure notice. The Immigration Act, 1976 provides for appeals with respect to sponsorship and for appeals from removal orders. A removal order does not include departure notice. While there would not appear to be any express provision in the Immigration Act, 1976 or the Immigration Appeal Board Rules, 1978 providing for an appeal signed by counsel, Rule 38(1) refers to a discontinuance of an appeal filed by counsel. It appears that if counsel can discontinue an appeal, he can also file an appeal.

M.M.I. v. I.A.B., in the matter of Holocek (F.C.T.O.), Gibson, 9th June 1975 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D. Davey Appeal heard: in Toronto, March 15, 1979 Judgment pronounced: March 20, 1979 Reasons by: A.B. Weselak (3pp.), concurred in by U. Benedetti, D. Davey Docket no. 79-9025 Counsel at hearing: W.A. MacIntyre, Esq., for the respondent.





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 6

Date August 24, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## DEPORTATION ORDERS

William Claude Lyle v. Minister of Employment and Immigration .....	6.1
Carol George Richards v. Minister of Employment and Immigration .....	6.2

## SPONSORSHIPS

Rajinder Singh Josh v. Minister of Employment and Immigration .....	6.3
Karnail Singh Atwal v. Minister of Employment and Immigration .....	6.4
Kurban Singh Bhatti v. Minister of Employment and Immigration .....	6.5
Karnail Singh Brar v. Minister of Employment and Immigration .....	6.6
Amrik Singh Nijjar v. Minister of Employment and Immigration .....	6.7
Yuen Ha Chung v. Minister of Employment and Immigration .....	6.8
Maria Anna Clara Bertrand v. Minister of Employment and Immigration .....	6.9
Manuella Yolanda Roach v. Minister of Employment and Immigration .....	6.10
Joy M. Kiriopoulos v. Minister of Employment and Immigration .....	6.11

## REFUGEE

Emilio Alejandro Naverette v. Minister of Employment and Immigration .....	6.12
Ahmed Ben Kadil .....	6.13
Juan Ruiz v. Minister of Employment and Immigration .....	6.14
Juan Antonio Perez v. Minister of Employment and Immigration .....	6.15
Maria Beatriz Verga Maldonado v. Minister of Employment and Immigration .....	6.16
Zolaikha Ramprashad v. Minister of Employment and Immigration .....	6.17

## JURISDICTION OF BOARD

Joy M. Kiriopoulos v. Minister of Employment and Immigration .....	6.11
Emilio Alejandro Naverette v. Minister of Employment and Immigration .....	6.12

## JURISDICTION OF BOARD

Minister of Employment and Immigration v. Roxanne Madeline Sleiman .....	6.18
--	------

## EVIDENCE

Karnail Singh Brar v. Minister of Employment and Immigration .....	6.6
--	-----

## MOTION BY THE MINISTER CONTESTING JURISDICTION OF BOARD

Minister of Employment and Immigration v. Roxanne Madeline Sleiman .....	6.18
--	------

## MOTION

Minister of Employment and Immigration v. Maria Anna Clara Bertrand .....	6.19
---	------

## REMOVAL ORDER

Elrode Alfanzo Reid v. Minister of Employment and Immigration .....	6.20
---	------

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF AN OFFENCE UNDER THE NARCOTIC CONTROL ACT - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.19(1)(c), (2), 27(1)(d), 125(3) - IMMIGRATION ACT, R.S.C. 1970, C.I-2, SS.18(1)(d), (2) - NARCOTIC CONTROL ACT, S.3

The appellant, a permanent resident, was convicted twice of possession of cocaine pursuant to section 3 of the Narcotic Control Act by way of summary conviction, and in each case, was sentenced to pay a fine. Because of these convictions, the appellant was ordered deported pursuant to section 18(3) of the Immigration Act, 1952. The corresponding section under the Immigration Act, 1976 is section 27(1)(d) and the latter refers to the way of prosecution of the crime. The interpretation of this section could be that if the appellant was proceeded against summarily and if the imprisonment was less than five years, he would not be deportable under section 27(1)(d).

**Held:** Appeal allowed on legal grounds, order of deportation quashed. The way the person was convicted must be examined i.e. whether he was proceeded against summarily or by indictment. If he was convicted summarily and the sentence for conviction by way of summary conviction is less than five years, section 27(1)(d) does not apply and that is exactly the situation the appellant is in. He was convicted twice by summary conviction and the maximum sentence under section 3(2) of the Narcotic Control Act, if the person is convicted by way of summary conviction, is one year or a thousand dollars fine or both.

**Coram:** J.V. Scott (Chairman), F. Glogowski, E. Teitelbaum **Case heard:** in Vancouver, August 25, 1978 **Judgment pronounced:** August 25, 1978 **Reasons by:** J.V. Scott (6 pp.), concurred in by F. Glogowski and E. Teitelbaum **Docket no.:** 78-6036 **Counsel at hearing:** D.J. Rosenbloom, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF AN OFFENCE UNDER THE CRIMINAL CODE - TRANSITIONAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C.I-2, SS.18(1)(e)(ii)(iii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77; C.52, SS.27(1)(d)(i), 72(1)(b), 75(1)(b)(c), 125(3)

The appellant, a permanent resident, was ordered deported on the ground that he was convicted of an offence under the Criminal Code pursuant to the Immigration Act, 1952. There is a similar provision under the Immigration Act, 1976.

**Held:** Appeal dismissed. The appellant even if married to a Canadian citizen, does not appear to be the head of the family and she is the one who provides for the financial needs. At the hearing, the appellant tried to show that he was on the good way of rehabilitating himself but the circumstances do not show, up to now, signs of maturity and stability of character that would justify the granting of special relief.

F. Glogowski (dissenting)

Having regard to all the circumstances of the case, the person should not be removed from Canada. The appellant is a landed immigrant in Canada since August 23, 1974. He came to Canada as a relatively young man. He was at that time about twenty years old. He committed this serious crime when he was about twenty-two years old. However, he paid his debt to society serving two years less one day in jail. There is no pattern of criminal activities in his life. The appellant's mother, who sponsored his admission to Canada, is a Canadian citizen and his wife, whom he married in this country, is a landed immigrant. Both women were present at the hearing, and from their evidence given on the appellant's behalf, it appears that there exists a genuine family relationship between mother and son, and wife and husband.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski (dissenting) and R. Tremblay  
Case heard: in Montréal, February 13, 1979 Judgment pronounced: February 14,  
1979 Reasons by: J.-P. Houle (5 pp.), concurred in by R. Tremblay Dissenting  
reasons by: F. Glogowski Docket no.: 77-1172 Counsel at hearing: B. Henry,  
Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

6.3 Rajinder Singh Josh v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND IDENTITY OF SPONSOREE - SPECIAL RELIEF GRANTED ONLY WHEN  
SPONSOREE COMES WITHIN THE SPONSORABLE CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77,  
C.52, S.79 - IMMIGRATION REGULATIONS, 1978, S.36 - IMMIGRATION APPEAL BOARD ACT,  
R.S.C. 1970, C.I-3, S.17

The appellant filed an application to sponsor his mother and brother into Canada.  
The application was refused in respect of the brother only because he had failed to  
establish his age and relationship to the sponsor. The evidence of his age produced  
were school certificates that showed his birthdate as being such that he was over 21  
at the time of the sponsorship application.

Held: Appeal dismissed. The preponderance of evidence and the sponsoree's  
testimony showed he was over twenty-one at the date of the sponsorship application.  
He is not in the sponsorable class and therefore, compassionate and humanitarian  
considerations granting special relief to the sponsoree cannot be considered.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay Case heard:  
Vancouver, January 26, 1979 Judgment pronounced: January 26, 1979 Reasons  
by: C.M. Campbell (9 pp.), concurred in by F. Glogowski and R. Tremblay Docket  
no.: 77-6073 Counsel at hearing: R.O. Rothe, Barrister and Solicitor, for the  
appellant; D.M. Hanbury, Esq., for the respondent

---

6.4 Karnail Singh Atwal v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE FATHER - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970,  
C.I-2, S.5(t) - IMMIGRATION REGULATIONS, PART I, S.36 - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C.52, S.79

The appellant filed an application to sponsor his parents, his brother and two  
sisters into Canada. The application was refused in respect of the father on the  
ground that he had not established that he was over 60 years of age at the date of  
the application. The appeal being heard under the Immigration Act, 1976, the  
parents are sponsorable regardless of age, and dependent children may accompany them  
if under 21 years of age at the date of application. Therefore, it was agreed that  
the mother, father and the two younger children were admissible. The elder daughter  
was over 21 years of age at the date of proclamation so she was inadmissible under  
the Immigration Act, 1976 unless it is established that the father was over 60 years  
of age at the date of the application.

Held: Appeal dismissed in respect of the older daughter, and no special relief can  
be granted since she was not a member of an admissible class in the first instance  
as set out in the Immigration Regulations, Part I. Her father according to the  
evidence, was not over 60 years of age at the date of the sponsored application.

Coram: C.M. Campbell (Vice-Chairman), D. Petrie and E. Teitelbaum Case heard:  
Vancouver, February 21, 1979 Judgment pronounced: February 21, 1979 Reasons  
by: C.M. Campbell (5 pp.), concurred in by D. Petrie and E. Teitelbaum Docket  
no.: 78-6167 Counsel at hearing: U. Dosanjh, Barrister and Solicitor, for the  
appellant; D.M. Hanbury, Esq., for the respondent

---

6.5 Kurban Singh Bhatti v. Minister of Employment and Immigration

SPONSORSHIP - ADOPTION OF THE SPONSOREE - FOREIGN LAW - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, C.I-2, S.5(t) - IMMIGRATION REGULATIONS, PART I, SS.31(1)(f), 36 - THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, SS.4, 10(iv), 16

The appellant filed and application to sponsor his purported adopted daughter into Canada which application has been refused on the ground that it was not established that she was legally adopted. The appellant has the burden of proof that she was adopted under the laws of India or any political sub-division thereof so as to create a relationship of parent and child between them. An adoption deed was produced which document is liberally endorsed by the natural and adoptive parents and by witnesses and is stamped with the seal of the sub-registrar of what appears to be Jawanshahr.

**Held:** Appeal dismissed. No evidence was adduced to establish that the adoption deed meets the requirements of section 16 of the Hindu Adoption and Maintenance Act, 1956 or that it has been registered in accordance with that section or that the sub-registry of Jawanshahr is an appropriate registry for this purpose. The appellant has failed to establish that the sponsoree is a member of the family class as required under the Immigration Regulations, 1978, or that she has met the requirements of the Immigration Regulations, Part I (repealed) which applied at the date of the adoption. And because the sponsoree is not within the family class, the Board is without jurisdiction to consider special relief.

Coram: C.M. Campbell (Vice-Chairman), D.E. Davey and E. Teitelbaum Case heard: in Vancouver, February 22, 1979 Judgment pronounced: February 23, 1979  
Reasons by: C.M. Campbell (4 pp.), concurred in by D.E. Davey and E. Teitelbaum  
Docket no.: 78-6164 Counsel at hearing: U. Dosanjh, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent

---

6.6 Karnail Singh Brar v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF TWO SPONSOREES - EVIDENCE

EVIDENCE - SPONSORSHIP - AGE OF TWO SPONSOREES - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C.I-3, S.17 - IMMIGRATION ACT, R.S.C. 1970, C.I-2, S.5(t) - IMMIGRATION REGULATIONS, PART I, SS.31(1)(d), (h), 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.79, 125(3)

The appellant filed an application to sponsor his parents, sister and brother into Canada. The application was refused in respect of the brother and the sister on the ground that they had not established that they were under 21 years of age. The evidence filed in support of the application to prove the age consists of school leaving certificates, there are no birth certificates. There is an affidavit signed by the uncle giving the age of the children to be over 21 years of age.

**Held:** Appeal allowed on legal grounds. Considering the record, "viva voce" evidence and submission of both counsel, the school certificates should be accepted as second best proof of age as it is clear from the appellant's testimony that there was no possibility to furnish other documentary evidence. There is nothing on the record to support the information given by the appellant's uncle in respect of the ages of the family concerned.

C.M. Campbell (dissenting)

I would dismiss the appeal. I find no credible evidence to support the claim they were under 21 years of age, the ages of the parents, their evidence with respect to the spacing of their children, the uncle's affidavit and the conflict of evidence with respect to education and school attendance together suggest that appellant's siblings were over 21 years of age at the date of the sponsored application.

Coram: C.M. Campbell (Vice-Chairman) (dissenting), F. Glogowski and R. Tremblay  
Case heard: Vancouver, January 26, 1979 Judgment pronounced: March 1, 1979  
Reasons by: F. Glogowski (10 pp.), concurred in by R. Tremblay Dissenting  
reasons by C.M. Campbell Docket no.: 77-7022 Counsel at hearing:  
R.O. Rothe, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the  
respondent

---

6.7 Amrik Singh Nijjar v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREE - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C.52, S.79

The appellant filed an application to sponsor his parents and brother into Canada. The application was refused in respect of the brother on the ground that he had not established that he was under 21 at the date of the application. There are discrepancies in the documents produced as evidence of age, these documents are his sponsorship application and his passport which show him as under 21 and the voters list shows him as over 21. There is no birth certificate and no school certificate.

Held: Appeal dismissed with respect of the brother, he is found to be over 21 and, therefore, not a member of the family class.

Coram: C.M. Campbell (Vice-Chairman), D. Petrie and E. Teitelbaum Case heard:  
Vancouver, March 1, 1979 Judgment pronounced: March 1, 1979 Reasons by:  
C.M. Campbell (3 pp.), concurred in by D. Petrie and E. Teitelbaum Docket no.:  
78-6079 Counsel at hearing: D.P. Pandia, Esq., for the appellant; D.M. Hanbury,  
Esq., for the respondent

---

6.8 Yuen Ha Chung v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE -  
COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION APPEAL BOARD ACT, R.S.C.  
1970, C.I-3, S.17 - IMMIGRATION ACT, R.S.C. 1970, C.I-2, S.5(d) - IMMIGRATION ACT,  
1976, S.C. 1976-77, C.52, SS.79, 125(3)

The appellant filed an application to sponsor her father and family into Canada. The application was refused in respect of the father on the ground that he had been convicted of crimes involving moral turpitude namely possession of heroin and simple larceny.

Held: Appeal allowed on equitable grounds. The appellant had a sincere wish to be reunited with her parents and take care of them in their old age. She and her husband are gainfully employed and there is no doubt that the sponsorees will be well cared for and their presence in Canada would not be detrimental to the interests and welfare of other Canadians. The convictions against the father were rendered twenty-two years ago and there is no evidence that he, since that time, had any problems with the law. A span of five years is usually considered a suitable time for assessing the possible rehabilitation of a person with a criminal record.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski and E. Teitelbaum Case heard:  
in Montréal, March 15, 1979 Judgment pronounced: March 16, 1979 Reasons by:  
F. Glogowski (2 pp.), concurred in by J.-P. Houle and E. Teitelbaum Docket no.:  
78-1044 Counsel at hearing: M.P. Betts, Notary, for the appellant;  
J.R. St. Louis, Esq., for the respondent

---

6.9 Maria Anna Clara Bertrand v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF SEVERAL CRIMES - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, S.79(2)(b)

The appellant filed an application to sponsor her husband and step-son into Canada, which application was refused on the ground that the father had been convicted of several crimes namely assault, driving at high speeds, driving while his licence was under suspension.

**Held:** Appeal allowed on equitable grounds, from the evidence it is clear that his difficulties with the law in Canada were related only to his unfortunate first Canadian marriage and to his fast driving. The sponsor, now his second Canadian wife, has a close relationship with her own family in Canada, the couple has in addition to the son, a daughter, and the Board considered that in the circumstances, the granting of special relief is justified.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and U. Benedetti  
**Judgment pronounced:** March 30, 1979  
**Case heard:**  
**Reasons by:** C.M. Campbell (3 pp.), concurred in by A.B. Weselak and U. Benedetti  
**Docket no.:** 77-7019  
**Counsel at hearing:** C.J. Dickey, Esq., for the respondent

---

6.10 Manuella Yolanda Roach v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE HAS AN UNFAVOURABLE MEDICAL DIAGNOSIS - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.19(1)(a), 79

The appellant filed an application to sponsor her mother into Canada which application was refused because of her medical diagnosis "chronic paranoid schizophrenia".

**Held:** Appeal dismissed. No documentation or expert witness was brought forward to refute the medical diagnosis, nor was it established that the sponsor or the husband of the sponsoree is in any position to offer either the financial or emotional sustenance that could be required.

**Coram:** C.M. Campbell (Vice-Chairman), D.E. Davey and E. Teitelbaum  
**Judgment pronounced:** April 24, 1979  
**Case heard:**  
**Reasons by:** E. Teitelbaum (5 pp.), concurred in by C.M. Campbell and D.E. Davey  
**Docket no.:** 78-6198  
**Counsel at hearing:** D.M. Hanbury, Esq., for the respondent

---

6.11 Joy M. Kiriopoulos v. Minister of Employment and Immigration

SPONSORSHIP - LATE FILING OF APPEAL - JURISDICTION OF BOARD

JURISDICTION OF BOARD - SPONSORSHIP - LATE FILING OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, S.79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 3, 4, 5, 17

The appellant filed an application to sponsor her husband into Canada. This application was refused and the appellant appealed from the refusal but the respondent challenged the jurisdiction of the Board to entertain this appeal since the Notice of Appeal was served upon an Immigration Officer more than 30 days from the refusal letter and therefore, the filing was not made in accordance with the Immigration Appeal Board Rules, 1978.

**Held:** Appeal dismissed for want of jurisdiction. There are Rules in the Immigration Appeal Board Rules, 1978 that expressly provide for the method of filing an appeal and the time allowed for filing such an appeal. In the present case, the Notice of Appeal was not filed in accordance with the applicable Rules.

M.M.I. and I.A.B., in the matter of Holecek, Jaroslav (F.C.T.D.), Gibson, June 9, 1975 (not yet reported); Bell and Wood (1927) W.W.R. 580.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum **Case heard:**  
in Toronto, March 6, 1979 **Judgment pronounced:** April 26, 1979 **Reasons by:**  
A.B. Weselak (5 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:**  
78-9227 **Counsel at hearing:** Miss B. Jackman, Esq., for the appellant; M. Prue,  
Esq., for the respondent

---

#### 6.12 Emilio Alejandro Naverette v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - JURISDICTION OF BOARD - REFUSAL BY THE MINISTER -  
DELEGATION OF AUTHORITY

JURISDICTION OF BOARD - REFUGEE - REDETERMINATION - REFUSAL BY THE MINISTER -  
DELEGATION OF AUTHORITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.45(4),  
45(5), 48(1), 59(1), 70, 71

The claimant to redetermination of his refugee status received a refusal letter signed by the Registrar of the Refugee Status Advisory Committee. According to section 45(5) of the Immigration Act, 1976, this letter of refusal has to be signed by the Minister or shall contain a delegation of authority and from this refusal letter flows the jurisdiction of the Board to deal with the application.

**Held:** Application for redetermination of refugee claim dismissed for want of jurisdiction but without prejudice to any other subsequent application for redetermination. The letter of refusal signed by the Registrar of the Refugee Status Advisory Committee is not in accordance with section 45(5) of the Immigration Act, 1976, and is therefore declared null and void.

Yanez Delgado, Juan Orinaldo v. M.E.I. (I.A.B. 78-1085), Scott, Houle, Tremblay, November 22, 1978 (not yet reported).

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski and R. Tremblay **Case heard:** in  
Montréal, February 5, 1979 **Judgment pronounced:** February 15, 1979 **Reasons**  
**by:** J.-P. Houle (5 pp.), concurred in by F. Glogowski and R. Tremblay **Docket**  
**no.:** 78-1104 **Counsel at hearing:** G. Sciortino, Barrister and Solicitor, for the  
appellant; M.A. Kulba, Esq., for the respondent

---

#### 6.13 Ahmed Ben Kadil

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR REASONS OF POLITICAL OPINION -  
IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.70, 71

The applicant filed a claim to refugee status on the ground that while still in the army in Algeria before he deserted, he wrote two pieces critical of his superiors and also he destroyed army weapons. He feels he would be persecuted for this if he should return to Algeria. But he said he had no political affiliations and he claims no other basis for refugee status.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention Refugee. There is no evidence that following this criticism any action was taken against this soldier with three years military service, nor is there any suggestion or threat of any kind that action might be taken later.

Coram: C.M. Campbell (Vice-Chairman), D.E. Davey and E. Teitelbaum Case heard:  
in Vancouver, February 20, 1979 Judgment pronounced: February 21, 1979  
Reasons by: C.M. Campbell (4 pp.), concurred in by D.E. Davey and E. Teitelbaum  
Docket no.: 79-6017 Counsel at hearing: R.G.H. Holloway, Barrister and  
Solicitor for the applicant

---

6.14

Juan Ruiz v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL PARTY - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C.52, S.70(1)

The applicant claims refugee status on the ground that while serving in the military, he expressed his political opinions and was then imprisoned, beaten and homes of members of his family were searched. Also it appears that he had problems with the government because he had contravened his country's laws with regard to registering guests in the hotel's register.

Held: Application refused to proceed and the applicant is determined not to be a Convention Refugee. The applicant's actions are not those of a person who is afraid of being murdered if he was to be returned to Argentina. He was never involved in political activities nor had he held any important position in any political party.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey Case heard: in  
Toronto, March 12, 1979 Judgment pronounced: March 12, 1979 Reasons by:  
U. Benedetti (5 pp.), concurred in by A.B. Weselak and D.E. Davey Docket no.:  
79-9048

---

6.15

Juan Antonio Perez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL PARTY - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C.52, SS.2(1), 45(1), (3), (6), 70(1), 71(1) - IMMIGRATION ACT, R.S.C.  
1970, C.I-2, S.7(1)(c)

The applicant is claiming refugee status on the ground that because he fired an employee, these differences with the latter resulted in threats, telephone calls and harassment from the political worker's committee, affiliated with the Government. Apparently, the employee went to his political committee and told that his employer fired him because of different political opinions.

Held: Application refused to proceed as the applicant is not a Convention Refugee. There are no reasonable grounds to believe that the claim, upon the hearing of the application, could be established.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey Case heard:  
in Toronto, March 13, 1979 Judgment pronounced: March 13, 1979 Reasons by:  
U. Benedetti (7 pp.), concurred in by A.B. Weselak and D.E. Davey Docket no.:  
79-9037

---

6.16 Maria Beatriz Verga Maldonado v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FREE EXPRESSION OF POLITICAL VIEWS - LOSS OF JOB - VICTIM OF SEXUAL MALTREATMENTS - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.70(1), 71(1)

The applicant, citizen of Chile, filed an application for redetermination of her refugee status on the ground that she was victim of multiple harassments due to her opposition to the repressive measures of the government after the coup in 1973. Indeed after expressing her views and opinions on the government's policy she was asked to resign of her job and finally lost her job in the Military Junta. She was also victim of sexual maltreatments and as a result suffered from neurotic anxiety.

**Held:** Applicant is not a Convention Refugee. It appears incredible that the military had to take about three months of illegal actions, accusations, harassment and demotion before it could fire the applicant from her work and after her dismissal she was still able to retain her very important hospital military card which enabled her to obtain a passport in two days and to pass the police check point at the airport without difficulty. It appears that the applicant has exaggerated in her description of the actual events.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, March 22, 1979 **Judgment pronounced:** March 22, 1979 **Reasons by:** U. Benedetti (11 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 79-9002 **Counsel at hearing:** M. Callahan, Student-at-Law, for the appellant; M. Prue, Esq., for the respondent

---

6.17 Zolaikha Ramprashad v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE - SINCERITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.2, 45, 70, 71

The applicant is basing her claim to refugee status on alleged persecution by reason of race, since she is of East Indian descent in a country apparently controlled by blacks, Guyana. She claims that she was turned down on job applications either as a teacher or as a nurse because she was East Indian and the positions were given to blacks. Also she apparently was the subject of harassment by blacks and claims that the police do not protect East Indians and even arrest them if they are seen outside their village.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. While the applicant's testimony at her examination may be considered as pointing to a certain amount of racial discrimination, there is no real evidence of persecution on racial grounds. It appears that the applicant has been in Canada for more than 4 years and has not previously made any claim to refugee status and there is no explanation given for this lengthy delay. Her sincerity in making the claim may be doubted.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and F. Glogowski **Case heard:** in Montréal, April 2, 1979 **Judgment pronounced:** April 2, 1979 **Reasons by:** J.V. Scott (5 pp.), concurred in by J.-P. Houle and F. Glogowski **Docket no.:** 79-1031 **Counsel at hearing:** G.W. Postelnik, Barrister and Solicitor, for the applicant

---

6.18 Minister of Employment and Immigration v. Roxanne Madeline Sleiman

MOTION BY THE MINISTER CONTESTING JURISDICTION OF BOARD - JURISDICTION OF BOARD - WHETHER THERE WAS A REFUSAL OF AN APPLICATION FOR LANDING

JURISDICTION OF BOARD - MOTION BY THE MINISTER CONTESTING JURISDICTION OF BOARD - WHETHER THERE WAS A REFUSAL OF AN APPLICATION FOR LANDING - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 41, 42, 43 - IMMIGRATION ACT 1976, S.C. 1976-77, C.52, SS.2(1), 9(1), 79, 115(2) - IMMIGRATION REGULATIONS, 1978, S.4(a), 6(1) - IMMIGRATION ACT, R.S.C. 1970, C.I-2, S.31(1)(a) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C.I-3, S.17

The respondent filed an application to sponsor her husband into Canada. In response to that application she received a letter in which she is advised of the way a sponsorship application has to be made in order to proceed in accordance with the requirements of the Act. From this letter of instruction, the respondent, the sponsor, filed an appeal to the Board. The applicant, the Minister, filed a motion contesting the jurisdiction of the Board to entertain the appeal since there was no refusal of an application for landing within the meaning of section 79(2) of the Immigration Act, 1976.

**Held:** Motion allowed. There has been no refusal of an application for landing and, therefore, the Board has no jurisdiction to hear an appeal of the sponsor on behalf of her husband.

Chaukla, Ajai Sheel v. M.E.I. (I.A.B. 77-7004), C.M. Campbell, F. Glogowski, J.C.A. Campbell, February 28, 1978 (not yet reported); Tsiafakis v. M.M.I. (1977) 2 F.C. 216, 73 D.L.R. (3d) 139.

**Coram:** C.M. Campbell (Vice-Chairman), D.E. Davey and E. Teitelbaum **Case heard:** in Vancouver, February 26, 1979 **Judgment pronounced:** February 26, 1979  
**Reasons by:** D.E. Davey (7 pp.), concurred in by C.M. Campbell and E. Teitelbaum  
**Docket no.:** 78-6209 **Counsel at hearing:** C.J. Dickey, Esq., for the applicant; D. Sorochan, Barrister and Solicitor, for the respondent

---

6.19 Minister of Employment and Immigration v. Maria Anna Clara Bertrand

MOTION - JURISDICTION OF BOARD - LATE FILING OF APPEAL - DENIAL OF NATURAL JUSTICE - TRANSITIONAL

MOTION - JURISDICTION OF BOARD - SPONSOR NOT A RESIDENT IN CANADA AT THE DATE OF THE APPLICATION - INTENTION OF ABANDONING RESIDENCE IN CANADA - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C.I-3, SS.17, 19(2) - IMMIGRATION APPEAL BOARD RULES, RULES 4(2), 6(2) - IMMIGRATION REGULATIONS, PART I, S.31(1)(a) - IMMIGRATION REGULATIONS, 1978, S.4(a) - IMMIGRATION INQUIRIES REGULATIONS, SS.12(b), (c)

The applicant, the Minister, filed two motions questioning the jurisdiction of the Board to hear the appeal. The first motion refers to the fact that the appellant was late in filing her sponsorship appeal, and the second motion refers to the fact that because she was not a resident of Canada she was not entitled to sponsor her husband for admission to Canada. From the evidence, the letter or refusal did not inform the sponsor of the grounds for refusal.

**Held:** Motions dismissed. The first motion relating to the late filing of the appeal: as the appellant did not receive the grounds for refusal of the application which she was entitled to receive in accordance with section 19(2) of the Immigration Appeal Board Act (repealed) and which the Board considers a condition precedent to the operation of section 6(2) of the said Immigration Appeal Board Rules (repealed), it considers that it would be a denial of natural justice to allow the motion.

The second motion relating to the residence of the sponsor: The sponsor was born in Canada 27 years ago and appears to have lived in this country until after the sponsoree was deported. They have established a relationship and she followed him to France when they were married. She has been kept in Europe by administrative procedures. It is clear that her time in Europe has been for the mere temporary purpose of caring for her family and of achieving her objective to return with them to Canada. The Board is reasonably satisfied that the sponsor did not, at any time, intend to abandon her residence in Canada and change it to France.

Also the file indicates that all of this has come about because the sponsoree was convicted of driving when his licence was under suspension. This offence for which he was convicted would not result in deportation under the Immigration Act, 1976.

Radic, Mirko v. M.M.I. (I.A.B. 70-1558), Scott, Campbell, Byrne, October 23, 1970 (not yet reported); Jandu, Daljinder Singh v. M.M.I. (I.A.B. 76-9459), Scott, Tremblay, Petrie, March 2, 1977 (not yet reported); Katemis, Georgios v. M.M.I. (I.A.B. 72-7354), Weselak, Benedetti, Byrne, January 29, 1973 (not yet reported); Adams, Janice May v. M.E.I. (I.A.B. 78-9455), Weselak, Benedetti, Petrie, October 3, 1978 (not yet reported).

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and U. Benedetti **Case heard:** in Vancouver, December 7, 1978 **Judgment pronounced:** December 7, 1978 **Reasons by:** C.M. Campbell (9 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 77-7019 **Counsel at hearing:** C.J. Dickey, Esq., for the applicant

---

## 6.20 Elrode Alfanso Reid v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - IMMIGRATION ACT, 1976, S.C. 1976-77, C.52, SS.27(1)(e), 33(1), 72 - IMMIGRATION ACT, R.S.C. 1970, C.I-2, S.22

The appellant was nominated for admission to Canada by his brother and on this nomination application the brother showed the appellant's marital status as "single". Further in his application for landing, the appellant identified himself as being single and also when he was interviewed by an Immigration Officer in Jamaica before he came in Canada. At his inquiry and during the hearing of the appeal, he admitted to the fact that he had not disclosed the existence of his wife and four children.

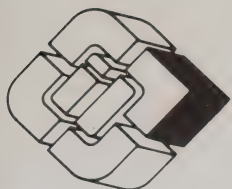
**Held:** Appeal dismissed. The appellant was obliged by law, to disclose his marriage and the existence of his four children to the Immigration Officers who interviewed him prior to his arrival in Canada and he was also obliged to disclose this information in his application for permanent residence. Misrepresentation of marital status is a material fact and the appellant was granted landing by reason of misrepresentation of a material fact exercised or made by himself.

Headlam v. M.M.I. 11 I.A.C. 141; Khan, Safdar Abdullah v. M.M.I. (I.A.B. 76-9350), Weselak, Benedetti, Petrie, March 9, 1977 (not yet reported); M.M.I. v. Brooks (1974) S.C.R. 850, 36 D.L.R. (3d) 522; Ebanks, Barbara Elinora v. M.M.I. (F.C.A., no. A-559-76), Jackett, Urie, Mackay, January 11, 1977 (not yet reported); Hilario, Mario Santiago v. M.M.I. (F.C.A., no. A-84-77), Heald, Urie, MacKay, September 27, 1977 (not yet reported).

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, February 15, 1979 **Judgment pronounced:** February 15, 1979 **Reasons by:** A.B. Weselak (4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 78-9170 **Counsel at hearing:** R. Bailey, Esq., for the appellant; W.A. MacIntyre, Esq., for the respondent

---





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 7

Date October 9, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## SPONSORSHIPS

Jean Li v. Minister of Employment and Immigration .....	7.1
Lisette Tremblay Phanor v. Minister of Employment and Immigration .....	7.2
Surinder Kaur Bains v. Minister of Employment and Immigration .....	7.3
Bonnie Georgina Young v. Minister of Employment and Immigration .....	7.4
Rajinder Singh Athwal v. Minister of Employment and Immigration .....	7.5
Piara Singh Johal v. Minister of Employment and Immigration .....	7.6
Minister of Employment and Immigration v. Lai Wo Ma .....	7.7
Elaine Oi-Yee Tseng v. Minister of Employment and Immigration .....	7.8

## REFUGEES

Jaime Aurelio Reque v. Minister of Employment and Immigration .....	7.9
Winston Ramprashad v. Minister of Employment and Immigration .....	7.10
Kadir Karim Ali Al-Khalifa v. Minister of Employment and Immigration .....	7.11
Mario Benito Puentes v. Minister of Employment and Immigration .....	7.12
Khalid Mahmood v. Minister of Employment and Immigration .....	7.13
Gustavo Ivan Labra Moran v. Minister of Employment and Immigration .....	7.14
Farooq Azam v. Minister of Employment and Immigration .....	7.15
Emil Stoianov Georgiev v. Minister of Employment and Immigration .....	7.16
Muhieddine Abdul Wahab Jomaa v. Minister of Employment and Immigration .....	7.17

## JURISDICTION OF BOARD

Minister of Employment and Immigration v. Lai Wo Ma .....	7.7
Shabbir Taherbhoy Khairulla v. Minister of Employment and Immigration .....	7.18
Hor Chan v. Minister of Employment and Immigration .....	7.19

## REMOVAL ORDERS

Shabbir Taherbhoy Khairulla v. Minister of Employment and Immigration .....	7.18
Hor Chan v. Minister of Employment and Immigration .....	7.19

## DEPARTURE NOTICE

Ronald McConnel v. Minister of Employment and Immigration .....	7.20
---	------

## REOPENING OF INQUIRY BY ORDER OF BOARD

Ronald McConnel v. Minister of Employment and Immigration .....	7.20
---	------

## EVIDENCE

Khalid Mahmood v. Minister of Employment and Immigration .....	7.13
--	------

7.1 Jean Li v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - NOT IN POSSESSION OF A VALID VISA - SINCERETY - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S.S. 5(d), (t), 18(1)(e)(vi), 30(2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor her husband into Canada which application was refused on the grounds that he was convicted of several crimes such as assault, fraud, forgery of false documents, wounding, etc. On the evidence adduced, the sponsoree was dishonest, not only with his in-laws by not telling his problems with immigration but also with the immigration authorities by coming here as a student not having the intention of going to school. Indeed, he worked several times without permission.

**Held:** Appeal dismissed. The letter of refusal is valid in law and there do not exist humanitarian and compassionate considerations as would warrant the granting of special relief.

**Coram:** C.M. Campbell (Vice-Chairman), D.E. Davey, E. Teitelbaum **Case heard:** in Vancouver, March 1, 1979 **Judgment pronounced:** March 1, 1979 **Reasons by:** E. Teitelbaum (in English; 5 pp.), concurred in by C.M. Campbell and D.E. Davey  
**Docket no.:** 78-6094 **Counsel at hearing:** D. Jung, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent

---

7.2 Lisette Tremblay Phanor v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - MARRIAGE OF CONVENIENCE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79

The appellant filed an application to sponsor her husband into Canada which application was refused on two grounds: the marriage was contracted in order to circumvent the Immigration Act and Regulations and the sponsoree was not in possession of a valid and subsisting visa.

**Held:** Appeal allowed on equitable grounds. We are in presence of a sincere family unit of which three of its members are Canadian citizens, the husband has no criminal background, he always has been correct with the immigration authorities and it appears that once the problems with immigration will have come to an end, the couple will probably live a perfectly viable married life.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay **Case heard:** in Montreal, March 1, 1979 **Judgment pronounced:** March 1, 1979 **Reasons by:** J.-P. Houle (in English; 8 pp.), concurred in by F. Glogowski and R. Tremblay  
**Docket no.:** 78-1097 **Counsel at hearing:** P.J. Weldon, Barrister and Solicitor, for the appellant; J.R. St. Louis, Esq., for the respondent

---

7.3 Surinder Kaur Bains v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - ADOPTION - FOREIGN LAW - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, S. 11(1)

The appellant filed an application to sponsor her father, brother and adopted brother into Canada which application was refused in respect of the adopted brother on the ground that the relationship between the sponsor and sponsoree had not been established satisfactorily. Apparently, the sponsoree was adopted by his grandfather, which would be the appellant's father. According to the Hindu Adoptions and Maintenance Act, 1956, s. 11(1), when the child to be adopted is a son, the adoptive father must not have a Hindu son. In the present case, the natural son of the adoptive father is included in the sponsorship application. The adoption deed is not in accordance with the law.

**Held:** Appeal dismissed. The Board is not persuaded that the sponsoree is in fact the adopted son of his grandfather and it flows from this that he is not a member of the family class.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak et U. Benedetti **Case heard:** in Vancouver, March 26, 1979 **Judgment pronounced:** March 26, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak et U. Benedetti **Docket no.:** 78-6096 **Counsel at hearing** D.P. Pandia, Esq., for the appellant; C.J. Dickey, Esq., for the respondent

---

#### 7.4 Bonnie Georgina Young v. Minister of Employment and Immigration

SPONSORSHIP - MARRIAGE OF CONVENIENCE - SPONSOREE NOT IN POSSESSION OF A VALID VISA - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 79

The appellant, filed an application to sponsor the admission of her husband into Canada, which application was refused on the ground that he was not in possession of a valid visa. The real ground for refusing the application was that the marriage was one of convenience: the reasons were that the sponsoree was a Catholic, was married by a Protestant clergyman, that his wife retained her maiden name and that she retained her own quarters.

**Held:** Appeal allowed on equitable grounds; according to the evidence adduced the marriage is found to be genuine in every respect.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti **Case heard:** in Vancouver, March 27, 1979 **Judgment pronounced:** March 27, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 78-6204 **Counsel at hearing** R.H.G. Holloway, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent

---

#### 7.5 Rajinder Singh Athwal v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND IDENTITY OF SPONSOREES - CREDIBILITY - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor into Canada his parents and his brother and sister. The application in respect of the siblings was refused on the ground that they could not provide satisfactory evidence of relationship to the sponsor or prove that they were under 21 years old. As evidence of their age, an untraceable birth certificate of the sibling was produced; embroidery course certificate was submitted for the sister, she had no school certificate. A school certificate was submitted for the brother, but its credibility was doubtful. At the hearing, there was also the testimony of an uncle which was not considered credible. Unsworn letters from two doctors estimating the ages were also produced.

**Held:** Appeal dismissed. The evidence adduced was of little value and does not establish that the brother and sister are members of the family class.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti **Case heard:**  
in Vancouver March 28, 1979 **Judgment pronounced:** March 28, 1979 **Reasons by:**  
C.M. Campbell (in English; 4 pp.), concurred in by A.B. Weselak and U. Benedetti  
**Docket no.:** 78-6121 **Counsel at hearing** D.P. Pandia, Esq., for the appellant;  
C.J. Dickey, Esq., for the respondent

---

#### 7.6 Piara Singh Johal v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - ADOPTION - FOREIGN LAW - IMMIGRATION REGULATIONS, PART I, S. 2(d)(iii), 31 (1)(c) - IMMIGRATION REGULATIONS, 1978, S. 4(b) - IMMIGRATION ACT, 1976 S.C. 1976-77, C. 52, S. 79 - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, S. 10(iv)

The appellant filed an application to sponsor the admission of his adopted son into Canada which application was refused on the ground that satisfactory evidence was not established, in that his son was legally adopted. According to the Indian law, a person may be adopted before he reaches the age of fifteen years. Evidence was given at the hearing describing the adoption ceremony.

**Held:** Appeal allowed in law. The adoption ceremony took place before the sponsoree reached his fifteenth birthday and the Board is satisfied that the adoption is in accordance with the Indian law.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak, U. Benedetti **Case heard:**  
in Vancouver, March 30, 1979 **Judgment pronounced:** March 30, 1979 **Reasons**  
**by:** C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak and  
U. Benedetti **Docket no.:** 78-6147 **Counsel at hearing** D.P. Pandia, Esq., for  
the appellant; C.J. Dickey, Esq., for the respondent

---

#### 7.7 Minister of Employment and Immigration v. Lai Wo Ma

SPONSORSHIP - JURISDICTION OF BOARD TO HEAR A SPONSORSHIP APPEAL - WHETHER LETTER OF INFORMATION CONSTITUTES A REFUSAL LETTER.

JURISDICTION OF BOARD - SPONSORSHIP APPEAL - WHETHER LETTER OF INFORMATION CONSTITUTES A REFUSAL LETTER - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 41 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(h) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION APPEAL BOARD RULES, RULE 6 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The applicant, the Minister of Employment and Immigration, is making a motion contesting the jurisdiction of the Board, to hear an appeal against a refusal of a sponsorship application.

**Held:** Motion allowed. The Board is without jurisdiction to hear the appeal. In the instant case, the letter in question does not constitute a refusal from which an appeal can be made, but rather is a letter of information concerning a sponsorship application refused a couple of years before.

Cerroni v. M.M.I. 11 I.A.C. 340; Ajah, Chantal Sylvie v. M.M.I. (I.A.B. 77-3076, Scott, Glogowski, Campbell, November 30, 1977 (not yet reported); Chaukla, Ajai Sheel v. M.E.I. (I.A.B. 77-7004), C.M. Campbell, Glogowski, J.C.A. Campbell, February 28, 1978 (not yet reported).

Coram: C.M. Campbell (Vice-Chairman), D.E. Davey, E. Teitelbaum Case heard: in Vancouver, February 19, 1979 Judgment pronounced: April 25, 1979 Reasons by: D.E. Davey (in English; 4 pp.), concurred in by C.M. Campbell and D.E. Davey Docket no.: 78-6148 Counsel at hearing G. Donegan, Barrister and Solicitor, F.D. Craddock, Esq., for the applicant; D. Vick, Barrister and Solicitor, for the respondent

---

7.8 Elaine Oi-Yee Tseng v. Minister of Employment and Immigration

SPONSORSHIP - ONE SPONSOREE MEMBER OF AN INADMISSIBLE CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), 79

The appellant filed an application to sponsor the admission into Canada of her father, mother, brother and sister. The application was refused in respect of the father as he would be a member of an inadmissible class, he has a heart condition.

Held: Appeal dismissed. The letter of refusal is in accordance with the law, it is clear from the medical report that the sponsoree has a heart condition and the sponsor provided no documentary evidence with respect to his health and the nature or degree of his disability.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski, G. Loiselle Case heard: in Vancouver, June 19, 1979 Judgment pronounced: June 19, 1979 Reasons by: C.M. Campbell (in English; 2 pp.), concurred in by F. Glogowski and G. Loiselle Docket no.: 79-6029 Counsel at hearing Calvin Hing-Wa Tseng, Esq., for the appellant; F.D. Craddock, Esq., for the respondent

---

7.9 Jaime Aurelio Regue v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL PARTY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that he was, as a student, a member of the Democratic Christian Party, a legal party in Bolivia. Because of his membership in this Party, he claims, he was wanted by the Department of Political Order, was detained to be questioned several times, was forced into hiding and that he had to obtain his passport through his father. His wife, however, gave evidence that all university students have been let alone in peace.

Held: Application refused to proceed and the applicant is determined not to be a Convention Refugee. His detention for questioning regarding student's demonstrations were of short duration. Although, claiming to be followed by the Department of Political Order, he was never prevented from registering at the University in Lapaz, nor was he picked up for any involvement with the planned silent march or demonstrations two days later. When the general amnesty was proclaimed, his wife said the students were not being harassed and that she was free to leave the country. Further, the applicant never made any effort to claim refugee status in the United States or to contact the Canadian Embassy before coming to Canada.

Coram: A.B. Weselak (Vice-Chairman), D.E. Davey, E. Teitelbaum Case heard: in Toronto, March 7, 1979 Judgment pronounced: March 7, 1979 Reasons by: D.E. Davey (in English; 4 pp.), concurred in by A.B. Weselak and E. Teitelbaum Docket no.: 79-9033 Counsel at hearing No one appeared

---

7.10 Winston Ramprashad v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 1, 2, 45(1), 70 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(f)

The applicant is claiming refugee status on the ground of persecution by reason of race, he is of East Indian descent in a country controlled by blacks. He claims it is almost impossible for East Indians to get a job in Guyana.

**Held:** Application refused to proceed and applicant is determined not to be a Convention refugee. At most, his testimony indicates a certain amount of racial discrimination in Guyana. His reasons for coming to Canada and for remaining here illegally since 1975 are clearly largely economic.

**Coram:** J.V. Scott (Chairman), J.-P. Houle, F. Glogowski **Case heard:** in Ottawa, April 2, 1979 **Judgment pronounced:** April 2, 1979 **Reasons by:** J.V. Scott (in English; 6 pp.), concurred in by J.-P. Houle and F. Glogowski  
**Docket no.:** 79-1031 **Counsel at hearing** G.W. Postelnik, Barrister and Solicitor, for the applicant; no one appeared, for the respondent

---

7.11 Kadir Karim Ali Al-Khalifa v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Iraq, of Turkish nationality, is claiming refugee status on the ground that if he should be returned in his country, his life and freedom would be threatened on account of his nationality and political opinion.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. Although, the applicant's land was confiscated and he was compelled to move presumably because of his Turkish nationality and his company with many other Kurds and Turks. He appears to have had no other difficulties with the Iraqi Government. He was steadily employed and was given permission to leave for W. Germany to pursue his studies as a marine engineer. There is no evidence that his life would be endangered because he failed to return to Iraq. He made no claim to refugee status on his arrival in Canada.

**Coram:** A.B. Weselak (Vice-Chairman), D.E. Davey, E. Teitelbaum **Case heard:** in Toronto, April 3, 1979 **Judgment pronounced:** April 3, 1979 **Reasons by:** E. Teitelbaum (in English; 4 pp.), concurred in by A.B. Weselak and D.E. Davey  
**Docket no.:** 79-9105 **Counsel at hearing** No one appeared

---

7.12 Mario Benito Fuentes v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 70, 71 - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that because he was active in the Socialist Party before the coup in 1973, his store was broken into, his merchandise destroyed and that he was beaten unconscious. Also, he claims that he was detained, interrogated; tortured several times, and apparently, his name was on the list as being an enemy of the Pinochet regime.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The evidence as a whole lacks credibility. Since the applicant's detention in November of 1973, he was not arrested or detained at any later date, although he was in Valparaiso and could have been found by the police if they had been seeking him. It also appears that he had no obvious difficulty in obtaining his passport or exit visa before he came to Canada. It is acquired knowledge that to obtain a passport in Chile a person must first apply to the police for a Certificate of Good Conduct and then, with the said document he has to apply at the Registry Office for a form. Finally, when the passport is ready, it must be signed and thumb-printed by the applicant at the Registry Office.

**Coram:** A.B. Weselak (Vice-Chairman), D.E. Davey, E. Teitelbaum **Case heard:** in Toronto, April 5, 1979 **Judgment pronounced:** April 5, 1979 **Reasons by:** A.B. Weselak (in English; 9 pp.), concurred in by D.E. Davey and E. Teitelbaum  
**Docket no.:** 79-9101 **Counsel at hearing** No one appeared

---

### 7.13 Khalid Mahmood v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - EVIDENCE

EVIDENCE - REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 27(2)(e), 45(1), 71

The applicant is claiming refugee status on the ground that he has a well-founded fear of persecution for reasons of being a member of a particular political group. As evidence, he produced a statement, not sworn, (although, the Board considered it as a vital part of the evidence as the applicant attached it to his sworn affidavit), that he was attacked and severely beaten and, as a result, his ear became defective. Also, attached to his declaration there were several pages of clippings from newspapers apparently published by the Pakistant organizations in Canada. These articles refer to the political situation in Pakistan. Another piece of evidence is a copy of a letter from a Peoples' Students Federation of Punjab to the effect that the applicant took an active part in the political affairs in the interest of the Pakistan Peoples Party.

**Held:** Application refused to proceed, and applicant determined not to be a Convention refugee. It appears that this is rather a frivolous application made only after the inquiry was started in order to secure permanent residence in Canada for economic reasons. The "evidence" produced does not carry much weight to support the applicant's claim since clippings from newspapers are no evidence on which a decision can be based and also in respect of the letter produced, there is no original letter on file but only a copy and there is no affidavit to indicate the authenticity of this letter.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski, G. Loiselle **Case heard:** in Montreal, April 10, 1979 **Judgment pronounced:** April 10, 1979 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by J.-P. Houle and G. Loiselle  
**Docket no.:** 79-1043 **Counsel at hearing** B.R. Benson, Barrister and Solicitor, for the applicant; no one appeared, for the respondent

---

### 7.14 Gustavo Ivan Labra Moran v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL PARTY - CREDIBILITY-IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70, 71

The applicant, a citizen of Chile, is claiming refugee status on the ground that he, being 15 years old in 1973, and a member of the Socialist Party in school, was victim of several harassments, numerous interrogations to furnish the military authorities with worthwhile information, was detained and suffered maltreatments while in prison. In 1977, he was again detained and harassed during interrogations relatively to his alleged political activities as a university student.

**Held:** Application refused to proceed and the applicant determined not to be a Convention refugee. The applicant's story is exaggerated and some of the evidence lacks credibility. He left Chile with a valid passport allegedly obtained in Valparaíso by his father, while the applicant was living in Santiago. It is acquired knowledge that to be able to obtain a valid passport in Chile a person must first apply to the local police for what is called a Certificate of Good Conduct, then after obtaining this document and with his I.D. card he has to apply at the Registry Office for a form and when the passport is ready, the same has to be signed and thumb-printed by the applicant in front of the proper authority at the Registry Office. It is difficult to believe that the applicant's father was able to obtain a passport in Valparaíso while his son was in Santiago.

E. Teitelbaum (dissenting)

Despite the discrepancies we have observed in his evidence, I would like an opportunity to assess, at a hearing, the credibility of the applicant's statements. The applicant's age (fifteen) at the time of his alleged torture is not as crucial an element in establishing his credibility. I cannot believe that age would be a factor in determining whether a person would be exempt from torture. I would allow the application to proceed.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum **Case heard:**  
in Toronto, April 19, 1979 **Judgment pronounced:** April 19, 1979 **Reasons by:**  
U. Benedetti (in English; 14 pp.), concurred in by A.B. Weselak **Dissenting Reasons**  
**by:** E. Teitelbaum **Docket no.:** 79-9116 **Counsel at hearing** No one appeared

---

#### 7.15 Farooq Azam v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C. 52, SS. 2 79(1), 70

The applicant claims refugee status on the ground that he will be persecuted if he returned in his country of origin because he was a member of the People's Party in Pakistan, a party which is against the government.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. His story is hard to believe, it seems that he is rather taking advantage of the turmoil that prevailed and still exists in his country to build up his case. The reasons why he fears persecution are not well-founded since it appears that he was not even in his country while the problems with the government happened. Further, he was illegally in Canada for four months before claiming refugee status, and prior to coming to Canada visited the United States at least ten times without claiming refugee status.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay, G. Loiselle **Case heard:** in  
Montreal, May 2, 1979 **Judgment pronounced:** May 2, 1979 **Reasons by:**  
R. Tremblay (in English; 4 pp.), concurred in by J.-P. Houle and G. Loiselle  
**Docket no.:** 79-1059 **Counsel at hearing** No one appeared

---

#### 7.16 Emil Stoianov Georgiev v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR POLITICAL CONVICTIONS -  
IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70

The applicant, a citizen of Bulgaria, claims refugee status on the ground that he has been persecuted for his political convictions. He was forced by his director where he was working to assist at public meetings in which all the young people of less than 25 years of age were grouped. Also, he apparently had made a claim to refugee status in France and in Austria and was refused. Further, he applied in France for admission to Canada as a permanent resident but was refused.

**Held:** Application refused to proceed. The applicant is determined not to be a Convention refugee.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay, G. Loiselle **Case heard:** in Montreal, May 2, 1979 **Judgment pronounced:** May 2, 1979 **Reasons by:** G. Loiselle (in English; 3 pp.), concurred in by J.-P. Houle and R. Tremblay  
**Docket no.:** 79-1058 **Counsel at hearing** No one appeared

---

7.17 Muhieddine Abdul Wahab Jomaa v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR REASONS OF RELIGION AND  
POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 70, 71

The applicant, a citizen of Lebanon, is claiming refugee status on the ground that in his country of origin he was under severe pressure by members of the Islamic Party, by members of the Moslem Party and by the Christian Party, to join their ranks. Upon refusing to do so, he was, by each of them, beaten and threatened to be killed for not joining the fight.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant may well be the victim of a civil war in his native Lebanon. His fear of persecution seems to stem from his refusal to fight in the war and his decision to flee instead. There do not appear to be any grounds upon which to consider that he may be a political refugee. "A civil war, even on religious grounds, is not persecution as contemplated by the Convention."

Ishac, Elias Iskandar v. M.M.I. (I.A.B. 77-1040), Scott, Houle, Tremblay, April 25, 1977 (not yet reported); Azzi, Elia Mtanios v. M.M.I. (I.A.B. 77-1094), Houle, Legaré, Tremblay, June 20, 1977 (not yet reported); Darwich, Hassan v. M.M.I. (I.A.B. 77-3038); Scott, Tremblay, Legaré, May 20, 1977 (not yet reported); Mantache, Ali Hassan v. M.M.I. (I.A.B. 78-1017), Houle, Legaré, Tremblay, February 13, 1978 (not yet reported).

**Coram:** A.B. Weselak (Vice-Chairman), D.E. Davey, E. Teitelbaum **Case heard:** in Toronto, May 8, 1979 **Judgment pronounced:** May 8, 1979 **Reasons by:** E. Teitelbaum (in English; 4 pp.), concurred in by A.B. Weselak and D.E. Davey  
**Docket no.:** 79-9032 **Counsel at hearing** No one appeared

---

7.18 Shabbir Taherbhoy Khairulla v. Minister of Employment and Immigration

JURISDICTION OF THE BOARD - ADJUDICATOR FINDING PERSON NOT PERMANENT RESIDENT -  
REVIEW BY THE BOARD OF THE DECISION OF THE ADJUDICATOR

REMOVAL ORDER - PERMANENT RESIDENT - NOT IN POSSESSION OF A VALID VISA - ABANDONMENT  
OF PERMANENT RESIDENCE - INTENTION - OUTSIDE CANADA FOR MORE THAN 183 DAYS - NO  
RETURNING RESIDENT PERMIT - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN  
SECTION 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.  
2(1), 9(1), 19(2)(d), 20(1), 24(2), 25(2), 32(5)(b), 72

The appellant was admitted as a permanent resident of Canada and left Canada for a visit in his country of origin, Pakistan, and remained outside Canada for more than 183 days. He returned without a permanent resident permit and sought admission as a permanent resident.

**Held:** Appeal dismissed for want of jurisdiction. The appellant has not rebutted the presumption raised by section 24(2) of the Immigration Act, 1976 and no satisfied the onus of proof placed upon him to prove that he did not abandon Canada as his place of permanent residence.

The appellant travelled on a one way ticket when he left Canada to go to Pakistan. He was only sporadically employed in Canada and was unemployed for a period of four to six months before his departure. He had no employment to return to nor had he made any inquiries as to possible employment upon his return. He closed practically all his bank accounts leaving only a minimal amount in the two which he claims he left open and he left no assets in Canada, having disposed of his personal possessions and what furnishings he had. He returned to Canada with only a small amount of money in his possession. On his return to Canada there were no friends or relatives to receive him. There was no compelling reason for him to stay in Pakistan for a period of one year and five months and there was nothing which prevented his return to Canada within a period of approximately three to four months, as stated by him with reference to his intention at the time of departure.

Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (not yet reported); Alexander, Magdi Halim v. M.E.I. (I.A.B. 78-9138), Weselak, Petrie, Teitelbaum, July 18, 1978 (not yet reported); Patel, Mahendrakumar Haribhai v. M.E.I. (I.A.B. 78-9163), Weselak, Benedetti, Petrie, January 9, 1979 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, E. Teitelbaum Case heard: in Toronto, April 24, 1979 Judgment pronounced: April 24, 1979 Reasons by: A.B. Weselak (in English; 5 pp.), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 79-9123 Counsel at hearing No one appeared, for the appellant; W.A. MacIntyre, Esq., for the respondent

---

#### 7.19 Hor Chan v. Minister of Employment and Immigration

REMOVAL ORDER - REFUGEE SO FOUND BY MINISTER - VALIDITY OF LETTER ADVISING HIM - RIGHT OF APPEAL - JURISDICTION OF BOARD

JURISDICTION OF BOARD - REMOVAL ORDER - REFUGEE SO FOUND BY MINISTER - VALIDITY OF LETTER ADVISING HIM - RIGHT OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 4(2), 27(2)(e), (g), 45(5), 72

The appellant arrived in Canada as a visitor and was authorized to stay for a period of seven days, although, he always said from the very beginning that his real intention was to enter Canada for good and that he wanted to work, therefore, that he wanted to be admitted as an immigrant. He failed to leave Canada after seven days and subsequently claimed refugee status in Canada, and he has been determined to be a Convention refugee by the Refugee Status Advisory Committee. It also appeared that he has been recognized refugee from Cambodia by the United States and also he had obtained his immigrant status in the United States. He was ordered deported from Canada pursuant to section 27(2)(e) of the Immigration Act, 1976

**Held:** Appeal dismissed for want of jurisdiction. The letter recognizing the appellant as a refugee signed by the Registrar of the Refugee Status Advisory Committee is null and void because not in conformity with the provisions of section 45(5) of the Immigration Act, 1976; there was no delegation of authority from the Minister, and the letter being void and null, everything that flows from it should also be considered as null and void. Since the appeal is dismissed for want of jurisdiction, the Board cannot consider whether there exist compassionate or humanitarian considerations.

Yanez Delgado, Juan Orinaldo v. M.E.I. (I.A.B. 78-1085), Scott, Houle, Tremblay, November 22, 1979 (not yet reported)

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski, R. Tremblay Case heard: in  
Montreal, February 15, 1979 Judgment pronounced: April 24, 1979 Reasons by:  
J.-P. Houle (in English; 14 pp.), concurred in by F. Glogowski and R. Tremblay  
Docket no.: 78-1079 Counsel at hearing No one appeared, for the appellant;  
J.R. St. Louis, Esq., for the respondent

---

7.20 Ronald McConnel v. Minister of Employment and Immigration

DEPARTURE NOTICE - JURISDICTION OF BOARD

REOPENING OF INQUIRY BY ORDER OF BOARD - JURISDICTION OF ADJUDICATOR - IMMIGRATION  
ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 27(2)(b), (e) 35, 59(1), 72(1), 74, 79(2)  
- IMMIGRATION REGULATIONS, 1978, S.S. 18(1), 39

The appellant filed an appeal from a departure notice. In the course of the hearing, counsel for the appellant asked the Board to make an Order directing that the inquiry be reopened under section 74 of the Immigration Act, 1976, thus requesting an adjudicator to hear additional evidence regarding the matter and, if the adjudicator at that point would see fit, to make a deportation order which could be appealed.

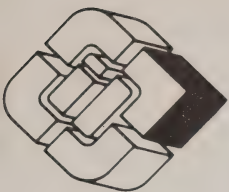
Held: Appeal dismissed for want of jurisdiction. The Board is a creature of statute and must find its jurisdiction within the statute creating it and there does not appear to be any provision in the statute creating it which provides for an appeal from a departure notice. Request of the appellant to reopen the inquiry is refused. There is no authority in section 74 of the Immigration Act, 1976, which empowers the adjudicator to make a removal order following the conclusion of an inquiry reopened by order of the Board.

Pille v. M.M.I. 4 I.A.C. 428; Bichotte v. M.M.I. 2 I.A.C. 395; Cecconi, Fiorella v. M.M.I. (I.A.B. 76-9393), Benedetti, Weselak, Petrie, February 2, 1977 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti, D.E. Davey Case heard: in  
Toronto, March 20, 1979 Judgment pronounced: March 20, 1979 Reasons by:  
A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D.E. Davey  
Docket no.: 78-9201 Counsel at hearing P. Copeland, Barrister and Solicitor,  
for the appellant; M. Prue, Esq., for the respondent

---





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 8

Date October 29, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

8.1 Linda May Thompson v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - CONSENT OF MINISTER - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18

The appellant filed an application to sponsor the admission of her husband into Canada which application has been refused on the ground that the sponsoree had been previously deported from Canada and the Minister's consent to re-enter Canada had been denied. The record contains an affidavit from the sponsor revealing the violent temper of the sponsoree and as a result of this affidavit, he was arrested and detained and subsequently deported. At the hearing, the sponsor testified and somewhat denied the statements she previously made about her husband.

**Held:** Appeal dismissed. The sponsoree, according to the record, is a well-built man with a somewhat violent temper. He has a record of criminal convictions in Canada and while in Canada for five years did very little to establish himself in this country and if he were allowed to come to Canada he would probably repeat the same performance. There are not such humanitarian and compassionate considerations to counterbalance the sponsoree's unfavourable record in Canada.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, February 15, 1979 **Judgment pronounced:** February 15, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 78-9150 **Counsels:** M. Diamond and T.H. Zizys, Esq., for the appellant; M. Prue, Esq., for the respondent.

---

8.2 Elizabeth Arriola Villadiego v. Minister of Employment and Immigration

SPONSORSHIP - DOUBTS ON THE FULFILMENT OF UNDERTAKING - EVIDENCE

EVIDENCE - SPONSORSHIP - DOUBTS OF THE FULFILMENT OF UNDERTAKING - IMMIGRATION REGULATIONS, 1978, SS. 6(1)(b)(i), (iii) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79.

The appellant filed an application to sponsor for admission to Canada her father, mother, sister and two brothers. The application was refused on the ground that the sponsor would not be able to fulfil the written undertaking she made regarding the lodging, care and maintenance of the sponsorees.

**Held:** Appeal allowed in law. Considering all of the evidence, much of which was apparently not available to the Immigration officers who processed the application and directed the refusal, the Board is satisfied that the appellant with the support of other members of her family will meet her undertaking pursuant to the Immigration Regulations, 1978.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and U. Benedetti **Case heard:** in Vancouver, March 29, 1979 **Judgment pronounced:** March 30, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 78-6173 **Counsels:** B. Tanjuaquio, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

---

8.3 Jacqueline Calixte v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - IDENTITY OF SPONSOREE - AUTHENTICITY OF A BIRTH CERTIFICATE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS 9(1), 79.

The appellant filed an application to sponsor her mother into Canada which application was refused on the ground that she was not in possession of a valid visa. From the record, there are discrepancies as to names and dates of birth, both in respect of the sponsor and of her mother, and these discrepancies cast doubts on the genuineness of the relationship. At the hearing, the appellant gave satisfactory explanation of the discrepancies in her own documents and a witness, formerly an advocate in Haiti, testified as to the authenticity of the documents filed in respect of the sponsoree.

**Held:** Appeal allowed on equitable grounds. The relationship between the sponsor and her mother has been established and, since the arrival of the sponsoree in Canada, the appellant contributed to her support. The sponsoree is an elderly lady, illiterate, who has no close relatives in Haiti; her other daughter also resides in Montreal and it would be inhumane to deny her the privilege of spending her last years in comfort with her daughters.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and F. Glogowski **Case heard:** in Montreal, April 5, 1979 **Judgment pronounced:** April 5, 1979 **Reasons by:** J.V. Scott (in English; 2 pp.), concurred in by J.-P. Houle and F. Glogowski **Docket no.:** 78-1084  
**Counsels:** D. Paquin, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

8.4 Myrtle Hesse v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA AND CONVICTED OF SEVERAL CRIMES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(1)(c), (2)(a), 79

The appellant filed an application to sponsor the admission of her son into Canada which application was refused on the ground that he was not in possession of a valid visa. Also the application was refused because he had been convicted of numerous crimes such as break and entry, theft, possession of dangerous weapons, not showing in court when required to do so, etc.

**Held:** Appeal dismissed. There do not exist compassionate and humanitarian considerations to warrant the granting of special relief. It is obvious that over the past four to five years, the appellant had not been able to influence her son. He refused to work, to continue his schooling, ran away, broke the law and was convicted of numerous offences.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, May 8, 1979 **Judgment pronounced:** May 9, 1979 **Reasons by:** D.E. Davey (in English; 5 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 78-9147  
**Counsels:** D.V. McCarthy, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

8.5 Bou Kin Yee v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF DRUG OFFENCES - REASONS OF REFUSAL NOT IN THE LETTER - LETTER DATED PRIOR TO PROCLAMATION OF IMMIGRATION ACT, 1976 - HUMANITARIAN AND COMPASSIONATE GROUNDS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19, 79, 125(3)

The appellant filed an application to sponsor his father into Canada which application was refused on the ground that the father had been convicted of possession of dangerous drugs such as opium, morphine and heroin. The appellant said at the hearing that he did not know that his father was a drug addict until he wanted to sponsor him and attributed his father's addiction to his state of loneliness and depression, and thought, if reunited with the family he would overcome his drug problem.

**Held:** Appeal allowed on equitable grounds. Even if the letter gives no reason for the refusal, the reason is clear from the record as a whole. From the appellant's testimony at the hearing and in the circumstances of the case, it was established that existed compassionate and humanitarian grounds to grant special relief.

Rojas, Edith De v. M.E.I. (I.A.B. 76-1102), Scott, Houle, Legaré, 8th November 1976 (not yet reported).

**Coram:** J.V. Scott (Chairman), C.M. Campbell and F. Glogowski **Case heard:** in Calgary, April 26, 1979 **Judgment pronounced:** May 10, 1979 **Reasons by:** J.V. Scott (in English; 3 pp.), concurred in by C.M. Campbell and F. Glogowski **Docket no.:** 78-6084  
**Counsels:** J. Kong, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

8.6 Tara Singh Mann v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREES - EVIDENCE

EVIDENCE - SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor the admission into Canada of his mother, brother and sister, which application was refused on the ground that the age and identity of the sponsorees had not been established.

**Held:** Appeal allowed in law. Considering the documentary evidence of record filed at the hearing of the appeal and the evidence of the sponsor and of his cousin, the Board is satisfied that the sponsored mother is the mother of the appellant and of the sponsored siblings. With respect to their age, all the sponsorees are within the sponsorable class pursuant to the Immigration Act, 1976.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, May 29, 1979 **Judgment pronounced:** May 29, 1979 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9034  
**Counsels:** M.F. Smith, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

8.7 Anaira Metellus v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREES WOULD BE A PUBLIC CHARGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS 2(1), 19(1)(a), (b), 79(2), (4)

The appellant filed an application to sponsor into Canada her two children, which application was refused on the ground that they will be unable to support themselves. From the evidence, the appellant gave a written undertaking for the support and care of the sponsorees. It seems that the refusal was also based according to a memorandum, on a medical report relating to the sponsorees. This report appeared to have been contradicted.

**Held:** Appeal allowed on equitable grounds. The appellant showed that she was able to support her children, she has a permanent job and also her sister gave, at the hearing, a testimony that she would help financially if needed.

**Held:** Further (Obiter) the phrase "other medical officer" in section 19(1)(a) may include a qualified doctor from the private sector.

---

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, June 1, 1979 **Judgment pronounced:** June 1, 1979 **Reasons by:** J.-P. Houle (in French; 8 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1009  
**Counsels:** No one appeared, for the appellant; M.A. Kulba, Esq., for the respondent.

---

#### 8.8 Anne Nicole Jean-Jacques v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE OUTSIDE CANADA - FAILURE TO ANSWER TRUTHFULLY VISA OFFICER'S QUESTIONS - PROPOSED MARRIAGE OF CONVENIENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 79

The appellant filed an application to sponsor her fiancé into Canada which application was refused on the ground that he failed to answer truthfully questions put by the visa officer. It appears from the record, that the real ground for refusing the application was that the engagement between the sponsor and the sponsoree was only to facilitate the admission into Canada of the sponsoree.

**Held:** Appeal allowed on legal grounds, the letter of refusal is not in accordance with the law, it was never proved that the requirements of section 9(3) were not fulfilled. Also the record contains a perfectly sincere declaration of intention of marriage signed by both the sponsor and the sponsoree.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, July 4, 1979 **Judgment pronounced:** July 5, 1979 **Reasons by:** J.-P. Houle (in French; 3 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1010  
**Counsels:** Miss H. Dessureault, articling student, for the appellant; J.R. St. Louis, Esq., for the respondent.

---

#### 8.9 Mohinder Singh Sahota v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - CANADIAN MARRIAGE - PRIOR FOREIGN MARRIAGE - FOREIGN LAW - VALIDITY OF FOREIGN MARRIAGE - PROOF

EVIDENCE - PROOF OF FOREIGN MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), (3), 30(2), 72(1)(a), 76(1) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18

The appellant a permanent resident was ordered deported on the ground that he was granted landing by reason of misrepresentation of a material fact. When he made his application, in India, for permanent residence he answered "engaged" on the form, when he arrived in Canada at the time of his being granted landed immigrant status, he answered "single". The respondent claims that he was married in India, long before he even made his application. An extract from the Hindu Marriage Registrar, an affidavit of his alleged wife to the effect that she and the appellant were married and, in fact, co-habitated for a period of time, approximately fifty days, and a letter written by the appellant to his alleged wife were documentary evidence produced at the hearing. The appellant maintained that he was never married in India, his evidence was that he only went through an engagement ceremony in accordance with the custom in his native country. His witnesses namely his mother, and his brother gave a testimony of what happened in India, and they concurred with the appellant that it consisted of an engagement and not of a marriage. The testimony of his uncle was to the contrary. The appellant is now married in Canada, and the certificate of this Canadian marriage was produced at the hearing.

**Held:** Appeal allowed on legal grounds. On the weight of evidence, the respondent has not adequately proven that the appellant had been married at the time of his application for permanent residence in Canada. It was not properly established that the extracts from the marriage registry were issued by the appropriate authority or were adequate proof of the marriage by Indian law. The other documents produced lacked detail. The appellant was a credible witness.

C.M. Campbell (dissenting)

I would dismiss the appeal. I find the appellant was married to the alleged wife in India and that on entering Canada he misrepresented this material fact deliberately. The affidavit of the first wife that they were married, the acknowledgment of this by the appellant in his letter, and the evidence of the uncle that he attended the wedding are together sufficient in my opinion to adduce proof of reputation of marriage. Witnesses in favour of the appellant were limited to himself, his brother, his mother and his present wife. They are all family members, and their statements are all self-serving, each in turn by their evidence has left their credibility in question. Having heard their testimony and watched their demeanour in court, I do not believe any of them.

Andrash v. Andrash and Moromila [1967] 60 W.W.R. 442; Sedgewick v. Sedgewick et al [1953] 9 W.W.R. (N.S.) 704

**Coram:** C.M. Campbell (Vice-Chairman), (Dissenting), F. Glogowski and R. Tremblay  
**Case heard:** in Vancouver, January 23, 1979 **Judgment pronounced:** April 24, 1979  
**Reasons by:** F. Glogowski (in English; 10 pp.), concurred in by R. Tremblay **Dissenting reasons by:** C.M. Campbell (12 pp.) **Docket no.:** 78-6161 **Counsels:** D. Vick, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

---

8.10 Cyril Dennis Bernard v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF ASSAULT OCCASIONING BODILY HARM - NOT IN POSSESSION OF A VALID VISA - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(d), (t), 22 - IMMIGRATION REGULATIONS, PART I, SS. 28(1), 34(3)(f) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 27(2)(d), 72(2)(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 15(1)(b)(ii)

The appellant first arrived in Canada as a visitor, he then returned to Trinidad, came back to Canada and completed an application for permanent residence but never was landed in Canada since he could not have the required amount of points on his assessment. He was then a prohibited person under the Immigration Act, 1952, not being in possession of a valid visa. He is also a prohibited person under the Immigration Act, 1976. In the course of the inquiry regarding his application for admission into Canada he was found to have been convicted in Canada of assault causing bodily harm and that he was also a prohibited person both under the Immigration Act, 1952 and the Immigration Act, 1976 on this ground.

**Held:** Appeal dismissed. During the course of the appellant's stay in Canada, approximately seven years, he has not been able to obtain permanent employment, and when he did he was dismissed or left. While he has some assets in Canada, these can be considered minimal considering the period of time that he has spent in this country. He has no relatives here and no permanent roots.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, April 26, 1979 **Judgment pronounced:** April 26, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D.E. Davey **Docket no.:** 77-9251 **Counsels:** Miss. T. Lobu, Esq., for the appellant; M. Prue, Esq., for the respondent.

---

8.11 Waclaw Antoni Mihael Hurt v. Minister of Employment and Immigration

REFUGEE CLAIM - POLITICAL OPINION - TRANSITIONAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(vi), (viii), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 11(1)(c), 14, 15 - IMMIGRATION REGULATIONS, PART I, S. 3 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3)

The appellant arrived in Canada driving a vehicle bearing West German licence plates and wearing a United States para-military uniform and told the Immigration Officer at the port of entry that he was on leave from the U.S. Army. He was admitted to Canada as a visitor on the basis of this information which was false. He, after his permitted stay of three months, did not report to an Immigration Officer his continuing presence in Canada. He was then ordered deported and appealed to the Board on the basis of a claim to refugee status. The appeal was refused by the Board with a further direction that the order of deportation be executed as soon as practicable. He appealed to the Federal Court and the Federal Court referred the matter back to the Immigration Appeal Board for a reconsideration on the basis that the appellant claimed status as a refugee from Poland and not from West Germany as the Board had considered. The appellant believes that, because of his illegal escape from Poland, his anti-communist activities and sentiments, his involvement and position in the American army, his attempts to obtain refugee status and the treatment of his family remaining in Poland he will be arrested, tortured and sentenced to death should he even return to Poland.

**Held:** Appeal dismissed pursuant to section 14 of the Immigration Appeal Board Act, order of deportation quashed and landing granted pursuant to section 15 of the Immigration Appeal Board Act. Having considered the evidence at the inquiry, the minutes of examination under oath, and the hearing of the appeal, the appellant does not strictly fall within the definition of a refugee as defined in the United Nations Convention. However, if the appellant were returned to Poland, he would suffer unusual hardship and there are such humanitarian considerations as to justify the Board in granting special relief.

Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Houle, Legaré, Glogowski, 12th April 1978 (not yet reported); Hurt, Waclaw Antoni Mihael v. M.M.I. (F.C.A., no. A-362-77), Heald, Ryan, Kelly, 25th January 1978 (not yet reported)

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, April 4, 1979 **Judgment pronounced:** April 5, 1979 **Reasons by:** A.B. Weselak (in English; 8 pp.), concurring in by U. Benedetti and E. Teitelbaum **Docket no.:** 77-9105 **Counsels:** G.W. Bell, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

8.12 Mr. Deonarine and Mrs. Etwaria Deonarine v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - TWO DECLARATIONS FILED - LATE FILING OF THE SECOND ONE - JURISDICTION OF BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70 - IMMIGRATION REGULATIONS, 1978, S. 40(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11(2)

The applicant, a citizen of Guyana, is claiming refugee status by reason of his involvement as an organizer of a political party. He states, as a result of the riots in 1964, that his family have been subjected to assaults, attacks, threats, their home was burnt out and that he had to do work against his will without pay. The applicant filed two declarations in support of his claim, one of which was not filed in the time limit set out in the Immigration Regulations.

The wife of the applicant produced, in support of her claim, the same declarations of her husband but gave independent submissions at the examination under oath; in that, she also claimed refugee status for reasons of race. She is Indian in a black environment.

**Held:** Applications refused to proceed and applicants determined not to be Convention refugees. The first declaration only was considered because it was filed according to the requirements of the Immigration Act and Regulations. The Board had no jurisdiction to consider the second declaration.

The applicant is claiming refugee status by reason of his involvement in a political party. There is a discrepancy in dates relating to his membership in the group. The government relocated families left homeless after the riots in 1964. He complained of harassment by youths in another political group, but he has not been persecuted by officials of the government. He applied to immigrate to Canada, two years before he claimed refugee status, and was refused. He never mentioned, at that time, that he was a refugee or that he was afraid to stay in Guyana. He travelled to Canada on a valid passport, obtained without problems. He lived in Canada illegally for almost two years and worked under a false name.

As for the wife's application, there was no evidence that she suffered persecution from the government by reason of race, she experienced no problems relating to her work and she had no difficulty in obtaining a passport or leaving the country.

Lugano, Juan Jose Fourment v. M.M.I. (F.C.A., no. A-35-77), Jackett, Le Dain, MacKay, 28th April 1977 (not yet reported); M.M.I. v. Immigration Appeal Board in the matter of Holocek, Jaroslav (F.C.T.D.), Gibson, 9th June 1975 (not yet reported)

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Petrie **Case heard:** in Toronto, January 9, 1979 **Judgment pronounced:** January 9, 1979 **Reasons by:** D. Petrie (in English; 5 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 78-9218 and 78-9217 **Counsel:** No one appeared.

---

8.13 Jorge Enrique Galvez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - EVIDENCE - MEDICAL REPORT - CORROBORATIVE

EVIDENCE - MEDICAL REPORT - CORROBORATIVE - REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that because he was an active member of the Movement of Action Popular United in Chile, he was, after the coup in 1973, arrested, detained for two to three weeks, and was unable to stand because of maltreatment and beatings. He also claims that because of his former political affiliation, he has been constantly watched and given inferior jobs. In July, 1977 he was forced to resign his job and he and his wife moved back with his mother, it became impossible for him to find a job. At the anniversary of the coup in 1977, he was again detained and suffered maltreatments, such as electric shocks to the genitals. At the hearing, the applicant filed a medical report which attested a left testicular atrophy which is consistent with repeated trauma to the testicles as one would see if electrical shocks were applied to that area.

**Held:** Applicant determined to be a Convention refugee. Although, there is doubt as to the applicant's credibility. The doctor was not summoned to appear at the resumed hearing and his report is corroborative of some of the applicant's main testimony. It was not examined or challenged by the respondent as to the probability of other possible causes of testicular atrophy

**Coram:** A.B. Weselak (Vice-Chairman), D.E. Davey, E. Teitelbaum **Case heard:** in Toronto, April 2, 1979 **Judgment pronounced:** April 3, 1979 **Reasons by:** D.E. Davey (in English; 4 pp.), concurred in by A.B. Weselak and E. Teitelbaum **Docket no.:** 78-9168 **Counsels:** F.M. Rotter, Barrister and Solicitor, for the applicant; D. Taylor, Esq., for the respondent.

---

**8.14 Tawfiq Mohammed Tawfiq Al-Shanti v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(c)**

The applicant is claiming refugee status on the ground that because he was active in the Free Palestinian Student Movement at the age of sixteen, and his well known family name in Jordan, he was arrested and detained twice by the Jordanian authorities. He also claims that he had difficulty in obtaining his original passport to get out of the country and his second passport which was issued to him five years later before he arrived in United States and then into Canada. While in Kuwait, after he had moved with his family to be with his father, he also had problems in that he was told to leave Kuwait because he did not possess a work permit nor any other visa permitting him to remain.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. Although, he stated that he had intentions to apply to come to Canada either as a visitor or as an immigrant, he never did apply at any Canadian Embassy. Instead, he obtained a tourist visa at the U.S. Embassy in Kuwait and after spending a few days in New York he obtained a visitor's visa to Canada. Also he never applied for refugee status in the United States and did not apply for it on his arrival in Canada. His actions are not those of a political refugee who is afraid of returning to his home country.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, April 5, 1979 **Judgment pronounced:** April 5, 1979 **Reasons by:** U. Benedetti (in English; 7 pp.), concurred in by A.B. Weselak and D.E. Davey **Docket no.:** 79-9055 **Counsels:** No one appeared.

---

**8.15 Mohamed Benabdallah v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70, 71**

The applicant is claiming refugee status on the ground that because of his political opinion he was arrested and detained by the Algerian authorities. The reason of such an arrest and detention was because he had failed to answer a convocation summing him to do his military service, which is compulsory in Algeria. Furthermore, he made no claim to refugee status when he was admitted to Canada in 1976 as a visitor, and no claim to refugee status in Germany or France where he had spent considerable time before coming to Canada.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee.

Coram: J.-P. Houle (Vice-Chairman), J.V. Scott and G. Loiselle Case heard: in Montreal, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: J.-P. Houle (in French, 4 pp.), concurred in by J.V. Scott and G. Loiselle Docket no.: 79-1079  
Counsels: No one appeared.

---

8.16 José Luis Lopez Arancibia v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant  
Chile, he would be persecuted because when he was a student, he was active as a member of the Young Socialist Party. Because of his affiliation to that party, he apparently was detained once but never was there any other arrest and detention.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant did not establish prima facie a reasonable fear of persecution if he would be returned to Chile and his claim to refugee status is made only to obtain his permanent residence in Canada.

Coram: J.-P. Houle (Vice-Chairman), J.V. Scott and G. Loiselle Case heard: in Montreal, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: J.-P. Houle (in French; 3 pp.), concurred in by J.V. Scott and G. Loiselle Docket no.: 79-1076  
Counsels: No one appeared.

---

8.17 Juan Bernardo Lopez Arancibia v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that because he was an active member of the Socialist Party in Chile in distributing pamphlets and doing propaganda against the political regime en place, he would be persecuted, if he has to go back in Chile.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant's testimony at his examination under oath is so full of incoherence and blanks of memory that it is very doubtful a fear of persecution could be established at a hearing. It is also clear from the examination that the claim to refugee status is only made to obtain permanent residence in Canada.

Coram: J.-P. Houle (Vice-Chairman), J.V. Scott and G. Loiselle Case heard: in Montreal, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: J.-P. Houle (in French; 3 pp.), concurred in by J.V. Scott and G. Loiselle Docket no.: 79-1075  
Counsels: No one appeared.

---

8.18 Louis Gosford May v. Minister of Employment and Immigration

MOTION - REHEARING OF APPEAL - REPRESENTATION BY COUNSEL - ABUSE OF PROCESS - DENIAL OF NATURAL JUSTICE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18

The applicant filed a motion for the rehearing of his appeal against a deportation order on the ground that desiring to be represented by counsel at the hearing of his appeal, he was denied that right; an abuse of process occurred as a result of the Special Inquiry Officer's actions; there was a denial of natural justice in that he was denied the right to be represented by counsel.

**Held:** Motion dismissed. The applicant was represented by counsel at his inquiry and he was afforded all the opportunities to obtain counsel at the hearing of his appeal, many adjournments were granted, and he agreed to proceed without counsel and therefore, he has not been denied natural justice.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, April 17, 1979 **Judgment pronounced:** April 17, 1979 **Reasons by:** U. Benedetti (in English; 6 pp.), concurred in by A.B. Weselak and E. Teitelbaum **Docket no.:** 77-9436 **Counsels:** No one appeared, for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

8.19 Julia May Farquharson v. Minister of Employment and Immigration

MOTION - REOPENING OF APPEAL - JURISDICTION OF BOARD

JURISDICTION OF BOARD - MOTION - REOPENING OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 72(1)(b), 75 - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 42, 44

The applicant filed a motion to reopen an appeal from a deportation order. The affidavit filed in support of the motion merely sets out the various happening before the Immigration Appeal Board from the date of the making of the deportation order to the date of the motion. It contained absolutely no indication of the evidence which the applicant proposed to introduce before the Board in support of the motion. However, at the hearing of the motion, counsel for the applicant made a statement that expert witnesses would give evidence at the hearing if it be allowed to be reopened. Counsel for the Minister challenged the jurisdiction of the Board to reopen an appeal pursuant to the provisions of the Immigration Act, 1976.

**Held:** Motion dismissed. It appears that the evidence could have been obtained at the hearing of the appeal by reasonable diligence. Considering section 72(1)(b), and section 75 of the Immigration Act, 1976, there is a similar and identical jurisdiction as the equitable jurisdiction that existed under section 15(1) of the Immigration Appeal Board Act (repealed). Following this to its logical conclusion, the Board has jurisdiction to reopen an appeal pursuant to the provisions of the Immigration Act, 1976.

Chan et al. v. M.M.I. 6 I.A.C. 429; Grillas v. M.M.I. [1972] S.C.R. 577, 23 D.L.R. (3d) 1

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, May 9, 1979 **Judgment pronounced:** June 5, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D.E. Davey **Docket no.:** 76-9071 **Counsels:** C. Roach, Barrister and Solicitor, for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

8.20 Minister of Employment and Immigration v. Suman Sharma

MOTION BY MINISTER - BOARD WITHOUT JURISDICTION - NO REFUSAL OF AN APPLICATION - SPONSOR, NOT A CANADIAN CITIZEN

JURISDICTION OF BOARD - SPONSOR, NOT A CANADIAN CITIZEN - MOTION BY MINISTER - BOARD WITHOUT JURISDICTION - NO REFUSAL OF AN APPLICATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 18

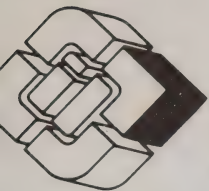
The applicant, the Minister of Employment and Immigration, made a motion contesting the jurisdiction of the Board in the appeal on the ground that to be an appellant, the sponsor has to be a Canadian citizen, the Notice of appeal has to be filed within thirty days of the refusal and third, there must be a Notice of refusal of the application. From the record, there is a letter addressed to the sponsor's father in India informing that some sponsorees were deleted from the application, a statutory declaration from an Immigration officer affirming that a refusal letter was issued, and also a declaration from the Secretary of State stating that the sponsor was a Canadian citizen.

Held: Motion dismissed, and the Immigration Commission is ordered to proceed in the usual manner with the appeal. The record clearly indicates that the sponsor was a Canadian citizen at the time she filed her appeal, and further indicates that she was informed of the reasons for refusal of her application by service on her of a copy of the letter of refusal sent to the sponsoree. The Board accepts this in compliance with section 79(1) and her appeal was filed 10 days after she was so served.

Silva, Mario Jorge Latado v. M.M.I. (I.A.B. 77-9009), Benedetti, Steele, Tisshaw, 22nd June 1977 (not yet reported); M.E.I. v. Chaukla, Ajai Sheel (I.A.B. 77-7004), C.M. Campbell, Glogowski, J.C.A. Campbell, 28th February 1978 (not yet reported)

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum Case heard: in Winnipeg, May 1, 1979 Judgment pronounced: May 24, 1979 Reasons by: F. Glogowski (in English; 6 pp.), concurred in by C.M. Campbell and E. Teitelbaum Docket no.: 78-6196 Counsels: C.J. Dickey, Esq., for the applicant; M. Werier, Barrister and Solicitor, for the respondent.

---



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 9

Date November 26, 1979

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

9.1 78-1074 François, Pamela v. Minister of Employment and Immigration  
9.2 78-6163 Mangat, Rajdevinder Singh v. Minister of Employment and Immigration  
9.3 78-6041 Kulle, Balwant Singh v. Minister of Employment and Immigration  
9.4 78-6119 Singh, Naib v. Minister of Employment and Immigration  
9.5 79-6019 Mah, Sun Oi v. Minister of Employment and Immigration  
9.6 78-6146 Sidhu, Mohinder Kaur v. Minister of Employment and Immigration  
9.7 79-6007 Wotypka, Joseph Frank v. Minister of Employment and Immigration  
9.8 78-9199 Adams, Rosette Leah Heather v. Minister of Employment and Immigration  
9.9 79-6079 Cho, Patrick Yiu-Sun v. Minister of Employment and Immigration  
9.10 78-6087 Sandhu, Surinder Kaur v. Minister of Employment and Immigration

#### DEPORTATION ORDERS

9.11 78-6114 Fernandes, Maximo Philip v. Minister of Employment and Immigration  
9.12 78-6192 Devrim, Mukaddes v. Minister of Employment and Immigration

#### REFUGEES

9.13 78-9178 Astudillo, Leonardo Arturo Espinosa v. Minister of Employment and Immigration  
9.14 78-9213 Inzunza, Ricardo Andres Orellana v. Minister of Employment and Immigration  
9.15 79-1064 La Cruz, Elio Umberto v. Minister of Employment and Immigration  
9.16 79-9145 Sandor, Maria v. Minister of Employment and Immigration  
9.17 79-1078 Lochan, Cyril v. Minister of Employment and Immigration  
9.18 79-9202 Hadid, Riad Mohammad v. Minister of Employment and Immigration  
9.19 79-1033 Mesina, Ana Maria Jorquera v. Minister of Employment and Immigration

#### MOTION BY MINISTER

9.20 78-9063 Minister of Employment and Immigration v. Miceli, Alfredo Jackson

#### EVIDENCE

9.4 78-6119 Singh, Naib v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

9.3 78-6041 Kulle, Balwant Singh v. Minister of Employment and Immigration  
9.8 78-9199 Adams, Rosette Leah Heather v. Minister of Employment and Immigration  
9.15 79-1064 La Cruz, Elio Umberto v. Minister of Employment and Immigration  
9.20 78-9063 Minister of Employment and Immigration v. Miceli, Alfredo Jackson

9.1

Pamela François v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR NOT ABLE TO FULFILL THE UNDERTAKING PROVIDING FOR CARE AND MAINTENANCE OF SPONSOREE - MARRIAGE OF CONVENIENCE - NO NOTICE OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 17

The appellant filed an application to sponsor into Canada the admission of her husband, which application was refused on the grounds: 1) that she would not fulfill the undertaking providing for lodging, care and maintenance, and 2) that the marriage was one to facilitate the admission to Canada of the sponsoree. The appellant "appealed" in anticipation of this refusal.

Held: Appeal dismissed; the Board has nothing to hear, there was no Notice of Appeal to the Board, there was only a Notice of Appeal in anticipation of a refusal but nothing afterwards, that is from the refusal of the application.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, May 7, 1979 Judgment pronounced: May 7, 1979 Reasons by: R. Tremblay (in French; 2 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 78-1074 Counsel: J.H. Grey, Barrister and Solicitor, for the appellant; J.R. St. Louis, Esq., for the respondent.

---

Reasons from the Bench - Summary by the editor

9.2

Rajdevinder Singh Mangat v. Minister of Employment and Immigration

SPONSORSHIP - REASONS FOR REFUSAL BASED ON OLD IMMIGRATION ACT AND REGULATIONS - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2

The appellant filed an application to sponsor the admission into Canada of members of his family. The letter of refusal bares a date subsequent to the coming into force of the Immigration Act, 1976 and the reasons for refusal of the application are based on the Immigration Act, 1952.

Held: Appeal allowed. The letter of refusal is dated September 5th, 1978 and the new Act was proclaimed on April 10th, 1978 and you will see that the refusal is based on the old Act and the old Regulations. It is a nullity.

Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Houle, Glogowski, Tremblay, 7th February 1979 (See CLIC, no. 4.13, June 29, 1979); Outubuddin, Syed v. M.E.I. (I.A.B. 79-6012), Scott, Campbell, Glogowski, 25th April 1979 (not yet reported).

Coram: J.V. Scott (Chairman), C.M. Campbell and F. Glogowski Case heard: in Vancouver, May 30, 1979 Judgment pronounced: May 30, 1979 Reasons from the Bench by: J.V. Scott (in English; 5 pp.), concurred in by C.M. Campbell and F. Glogowski Docket no.: 78-6163 Counsel: D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

9.3

Balwant Singh Kulle v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREES - EVIDENCE - CREDIBILITY OF DOCUMENTS

JURISDICTION OF BOARD - REFUSAL OF AN APPLICATION FOR LANDING - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a)

The appellant filed an application to sponsor the admission into Canada of his widowed mother and of his brother. The application was refused because they could not produced satisfactory evidence establishing their relationship to the sponsor and that the brother was under 21 years of age. The issue of the case is the relationship of the sponsor to the persons sponsored. The most crucial documents produced in effort to prove that the appellant was the son of his alleged mother was a birth certificate, which showed discrepancies between his date of birth, (1947) and his date of birth shown on his sponsorship application, (1950).

The respondent contested the jurisdiction of the Board to entertain the appeal in saying that, by coming in the country, the sponsorees have abandoned their application for landing completed overseas.

**Held:** The Board has jurisdiction in this appeal; coming to Canada as a visitor, and being admitted in this category, as is the case of the sponsorees cannot be construed as an abandonment of an application for landing made overseas. Furthermore, the application to sponsor, and the refusal took place pursuant to the legislation existing before the proclamation of the Immigration Act, 1976, at which time sponsorship was of a person, not of an application for landing.

**Held:** Appeal dismissed. The birth certificate showing a date of birth in 1947, which was obtained after the making of the sponsorship application, was only produced in an endeavour to establish a relationship between the sponsored mother and the sponsor, and the sponsored brother and the sponsor, a relationship which has not been satisfactorily established. The sponsorees, present at the hearing were not credible witnesses in this regard, nor was the appellant.

M.E.I. v. Sleiman, Roxanne Madeline (I.A.B. 78-6209), Campbell, Davey, Teitelbaum, 26th February 1979 (not yet reported).

**Coram:** J.V. Scott (Chairman), C.M. Campbell and F. Glogowski **Case heard:** in Vancouver, May 30, 1979 **Judgment pronounced:** June 1, 1979 **Reasons by:** J.V. Scott (in English; 7 pp.), concurred in by C.M. Campbell and F. Glogowski **Docket no.:** 78-6041 **Counsel:** R.O. Rothe, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

---

#### 9.4 Naib Singh v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREE - EVIDENCE - CREDIBILITY OF DOCUMENTS

EVIDENCE - CREDIBILITY OF DOCUMENTS - SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREE - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, S. 36

The appellant filed an application to sponsor the admission into Canada of his father, mother, sister and brother. The application was refused in respect of the brother because he did not gave satisfactory evidence establishing his family relationship to the sponsor and that he was under 21 years of age. The evidence produced, as proof of his age, are a school certificate, a "not traceable" certificate to indicate that there was no record of his birth, a vaccination certificate and a copy of a Deed of Land showing a transfer from the father to his sons.

**Held:** Appeal dismissed, a "not traceable" certificate proves nothing, a vaccination certificate, according to Indian officials in New Delhi is not reliable regarding dates of birth and upon verification the school certificate was found to be fraudulent. The Deed of Land has reference to relationship but is not helpfull in determining the age of the sponsoree.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum **Case heard:** in Winnipeg, May 2, 1979 **Judgment pronounced:** June 20, 1979 **Reasons by:** C.M. Campbell (in English; 6 pp.), concurred in by F. Glogowski and E. Teitelbaum **Docket no.:** 78-6119 **Counsel:** D. Matas and M. Werier, Barristers and Solicitors, for the appellant; C.J. Dickey, Esq., for the respondent.

---

9.5

Sun Oi Mah v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMINAL OFFENCES - SPONSOR NOT INFORMED OF PROPER GROUNDS FOR REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 79

The appellant filed an application to sponsor the admission into Canada of her father, which application was refused on the ground that the sponsoree had been convicted of several criminal offences, namely possession of dangerous drugs. In the refusal letter, section 19(1)(c) of the Immigration Act, 1976 is quoted and this section refers to offences that may be punishable under any Act of Parliament and for which a maximum term of imprisonment of ten years or more may be imposed. The crimes of possession of narcotic in the Narcotic Control Act may be punished by a term of imprisonment of seven years.

Held: Appeal allowed in law. The purpose of the Act and Regulations is clearly to enable an appellant to know the case she has to meet, therefore, the reasons for the refusal must be given in intelligible terms and follow the Act and Regulations. From the evidence, it is clear that the refusal letter quoted the wrong section of the Act as a ground for rejection of the application and therefore, the appellant was not informed of the proper grounds for refusal.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard:  
in Vancouver, June 21, 1979 Judgment pronounced: June 21, 1979 Reasons by:  
F. Glogowski (in English; 5 pp.), concurred in by C.M. Campbell and G. Loiselle Docket  
no.: 79-6019 Counsel: No one appeared, for the appellant; F.D. Craddock, Esq., for  
the respondent.

9.6

Mohinder Kaur Sidhu v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREES - TRANSITIONAL - SUBSEQUENT LETTER CORRECTING REFUSAL LETTER - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, PART I, S. 36

The appellant filed an application to sponsor the admission into Canada of her two brothers which application was refused on the ground that they had not provided satisfactory evidence that they were under 21 years of age, and the letter of refusal cited the Immigration Regulations, Part I (now repealed) before the hearing of the case. The Commission of Employment and Immigration send a second letter of refusal changing the sections of the Immigration Regulations, Part I for the corresponding sections of the Immigration Act, 1976. At the hearing, a motion was brought by the appellant arguing that the refusal letter was not in accordance with the law and cannot be corrected by a subsequent letter.

Held: Appeal allowed on legal grounds, since the refusal depends on the Immigration Regulations, Part I, which was repealed on April 10, 1978, it is a nullity.

Mangat, Rajdevinder Singh v. M.E.I. (I.A.B. 78-6163), Scott, Campbell, Glogowski, 30th May 1979 (not yet reported).

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay Case heard:  
in Vancouver, July 17, 1979 Judgment pronounced: July 17, 1979 Reasons by:  
C.M. Campbell (in English; 4 pp.), concurred in by F. Glogowski and R. Tremblay Docket  
no.: 78-6146 Counsel: D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq.,  
for the respondent.

9.7

Joseph Frank Wotypka v. Minister of Employment and Immigration

SPONSORSHIP - OBLIGATION OF FINANCIAL SUPPORT - SPONSOREE IN A PRIVILEGED CLASS - REFUSAL LETTER NOT BASED ON SAME GROUNDS FOR SPONSOREE AND SPONSOR - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(b), (2), 79 - IMMIGRATION REGULATIONS, 1978, SS. 6(1)(b)(i), (iii), (3), 41(b)

The appellant filed an application to sponsor the admission into Canada of his wife which application was refused on the ground that she would be a public charge. The record reveals that the letter of refusal, undated, sent to the sponsor was based on section 6(1)(b)(iii) of the Immigration Regulations, 1978 and the letter of refusal sent to the sponsoree was based on section 19(1)(b) of the Immigration Act, 1976.

**Held:** Appeal allowed on legal grounds. The refusal to approve the application for landing made by the sponsoree and sponsored by the appellant was not made in accordance with the Immigration Act and the Regulations and was not based on proper grounds. The reasons for the refusal must be given in intelligible terms, to enable the appellant to know the case he has to meet. The letter to the sponsor did not follow the Regulations. In this letter, section 19(1)(b) and 19(2) of the Immigration Act, 1976 are not mentioned, although they were mentioned in the letter to the sponsoree. The Commission had not considered, as it should, or had overlooked at the time of the writing of the refusal letter, Regulation 6(3)(a) which exempts the spouse of the sponsor from the requirements of section 6(1)(b)(i), (iii) of the Regulations. There is no need to resolve the question of the refusal letter not based on the same grounds for the sponsor and the sponsoree.

Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Houle, Glogowski, Tremblay, 7th February 1979 (See CLIC, no. 4.13, June 29, 1979).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and D.E. Davey **Case heard:** in Vancouver, June 28, 1978 **Judgment pronounced:** July 17, 1979 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by C.M. Campbell and D.E. Davey **Docket no.:** 79-6007 **Counsel:** Mrs. S. Cooke, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

---

#### 9.8 Rosette Leah Heather Adams v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION OF BOARD - LATE FILING OF APPEAL

JURISDICTION OF BOARD - SPONSORSHIP - LATE FILING OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 4, 5, 17

The appellant filed an application to sponsor the admission into Canada of her husband. The record reveals that a first letter of refusal was sent to the appellant; and there is a memorandum from the officer-in-charge which states that the latter letter of refusal never reached the appellant because she could not be located. The new address was discovered and another notification was sent to the appellant again by registered mail. The Notice of appeal was served within the thirty day period from the second letter but not within the thirty day period required from the first letter.

**Held:** Appeal dismissed for want of jurisdiction. The Board is bound by its statutory provisions and has no inherent equitable jurisdiction to extend the time for filing an appeal, and the second letter sent by the Department to the appellant does not confer jurisdiction upon this Board to hear this appeal.

M.M.I. v. Immigration Appeal Board, in the matter of Holecek, Jaroslav (F.C.A. no. A-382-75), Urie, Ryan, MacKay, 9th June 1975 (not yet reported); Lamptey-Drake, Agyei-Bediakoh v. M.E.I. (F.C.A., no. 78-A-356), Jackett, Urie, Ryan, 15th June 1979 (not yet reported); Grillas v. M.M.I. [1972], S.C.R. 577, 23 D.L.R. (3d) 1.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, July 17, 1979 **Judgment pronounced:** July 18, 1979 **Reasons by:** A.B. Weselak (in English; 6 pp.), concurred in by U. Benedetti and D.E. Davey **Docket no.:** 78-9199 **Counsel:** M. Philip, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

9.9

Patrick Yiu-Sun Cho v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE IN POOR HEALTH - FINANCIAL ASSETS TO PROVIDE FOR HEALTH SERVICES, NOT SUFFICIENT TO GRANT SPECIAL RELIEF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79(2)

The appellant filed an application to sponsor into Canada his parents and two brothers. The application was refused in respect of the father, who was found inadmissible because of heart problems probably require major surgery; he would cause excessive demand on health services. At the hearing, the appellant provided the court an affidavit from the father with attachments setting out his financial situation and affidavits from siblings agreeing to extend support to their parents, should they be allowed to emigrate to Canada.

**Held:** Appeal dismissed. The refusal is in accordance with the law. The parents have nine children. Three of their sons are in Canada and the rest of the family is in Hong Kong enjoying a prosperous life. The desire of the three sons in Canada to be reunited with their parents and the availability of Canadian health services to their father are not, having regard to all the circumstances of the case, sufficient reason to justify the granting of special relief.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay **Case heard:** in Vancouver, July 18, 1979 **Judgment pronounced:** July 19, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and R. Tremblay **Docket no.:** 79-6079 **Counsel:** V. Lam, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

9.10

Surinder Kaur Sandhu v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - ADOPTION - FOREIGN LAW - PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2) - IMMIGRATION REGULATIONS, PART I, S. 36 - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, AMENDED IN 1962, SS. 10(iv), 11(vi)

The appellant filed an application to sponsor the admission into Canada of her mother and of her adopted brother, citizens of India. This application was refused in respect of the brother on the ground that there was no satisfactory evidence that he had been legally adopted by the mother according to the Indian Law. There was apparently a Deed of Adoption registered ten years later but it was not part of the record nor was it introduced into evidence. The passport of the adopted child when he first came into Canada shows him as the son of his natural father and throughout his life he has been brought up as the son of his natural father.

**Held:** Appeal dismissed. Had there been an adoption in accordance not only with the law but with custom and tradition the sponsoree would have been well integrated into his new family and his natural father would not be acknowledged as his father ten years later. Further, the so-called Deed of Adoption was executed for the sole purpose of achieving his entry into Canada as a landed immigrant.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum **Case heard:** in Vancouver, May 24, 1979 **Judgment pronounced:** August 7, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and E. Teitelbaum **Docket no.:** 78-6087 **Counsel:** R.O. Rothe, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

---

9.11

Maximo Philip Fernandes v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - FALSE AND MISLEADING INFORMATION - ALL THE CIRCUMSTANCES OF THE CASE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 72(1)(b), 76(1)

The appellant was admitted to Canada as a landed immigrant after having lied to the Immigration Officer and even forged the name of a friend on a letter to the Immigration authorities. At the hearing, he did not contest the validity of the deportation order, and his appeal was only in equity.

**Held:** Appeal allowed, removal (deportation) order quashed. Having regard to all the circumstances of the case, the appellant should not be removed from Canada. Present and former employers, leaders and friends from Church, and his former parish priest, testified at the hearing on behalf of the appellant. While in Canada, he attended different courses to upgrade his technical knowledge, he is one of the best technicians in his field of electronics, his present employer wants to retain his services, he appears to be well settled in Canada and takes a great interest in Canadian affairs, he is married to a Canadian citizen, and being a Christian he might have serious difficulties if returned to Pakistan where discrimination against the small Christian minority is growing under the present Islamic regime.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum **Case heard:** in Winnipeg, May 3, 1979 **Judgment pronounced:** May 3, 1979 **Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by C.M. Campbell and E. Teitelbaum **Docket no.:** 78-6114 **Counsel:** No one appeared, for the appellant; C.J. Dickey, Esq., for the respondent.

---

9.12 Mukaddes Devrim v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - MENS REA - INTERPRETER - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18(1)(e)(viii) - ONTARIO WATER RESOURCES COMMISSION ACT, S. 32(1)

The appellant, a citizen of Turkey, arrived in Canada after having been nominated for admission by her brother. On her application she showed her marital status as "single", but in fact, she was married when she arrived in Canada. Apparently, in her initial interview in Turkey, she stated that she was engaged and further more she reported subsequently her change of marital status, but the authorities did not mark it on her form. When she arrived in Canada, she signed her maiden name on her immigrant record card and also her passport was in her maiden name. At the airport in Toronto, she could not communicate in English nor had she any idea what was shown on her immigrant record card.

**Held:** Appeal allowed on equitable grounds. Misrepresentation of marital status is a misrepresentation of a material fact, and mens rea is not an element. This part of section 27(1)(e) imports absolute liability, and even innocent misrepresentation brings a person within it. However, the appellant, in her contacts with the Canadian Immigration authorities, overseas and at the airport on her arrival in Canada, acted on the whole in good faith. Her uncontested evidence would seem to indicate that she was seriously misled by the information given at her second attendance at the Canadian Embassy in Ankara, and she was certainly seriously disadvantaged - in the light of subsequent events - by the absence of a Turkish interpreter at the airport on her arrival.

M.M.I. v. Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522; The Queen v. Sault Ste. Marie [1978] 2 S.C.R. 1299; Vaaro v. R. [1933] S.C.R. 36; Re Vergakis (1964) 49 W.W.R. 720 (B.C.S.C.).

**Coram:** J.V. Scott (Chairman), F. Glogowski and C.M. Campbell **Case heard:** in Calgary, April 24, 1979 **Judgment pronounced:** June 1, 1979 **Reasons by:** J.V. Scott (in English; 9 pp.), concurred in by F. Glogowski and C.M. Campbell **Docket no.:** 78-6192 **Counsel:** M.L. Moore, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

9.13 Leonardo Arturo Espinosa Astudillo v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP BEING A NUCLEAR FAMILY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 1(2), 2(1), (2), 45(1), (5), 70(1), (2)

The applicant is claiming refugee status because of his membership in a particular social group, that being his nuclear family. His two brothers were active members of the Socialist Party of Chile. He claims that, after the coup, he was arrested, detained several times, harassed and physically abused by the Chilean authorities.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. He had no political involvement in Chile, his brothers who were politically active are not in detention, he met with no difficulty in leaving the country, he worked continuously from 1973 to 1977 when he came to Canada and his application to the Canadian Embassy in Chile, for permanent residence in Canada was refused.

Coram: A.B. Weselak (Vice-Chairman), D. Petrie and E. Teitelbaum Case heard: in Toronto, November 16, 1978 Judgment pronounced: November 16, 1978 Reasons by: D. Petrie (in English; 10 pp.), concurred in by A.B. Weselak and E. Teitelbaum Docket no.: 78-9178 Counsel: No one appeared.

---

9.14 Ricardo Andres Orellana Inzunza v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A GROUP DIFFUSING POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 45(1), 70(1)

The applicant is claiming refugee status on the ground that he was a member of a group giving artistic performances which had political ideas in sympathy of the United Popular Government, a group in opposition to the present regime in Chile. After the coup, which established the present regime, he claims that he was arrested, detained, beaten very badly, accused of being subversive, and his family was harassed by the authorities.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant was never involved in any political activities, he was an active member of the Christian Community and his activities were not of such a nature as to merit close surveillance by the authorities. Since his release in 1973, he has been steadily employed in Chile, it is to be presumed that the military could have proceeded with his arrest and interrogation at any time had they so desired. A friend was arrested in 1977 and subsequently released after torture, but the applicant waited for six months after this before obtaining his passport, apparently without difficulty.

N.B. See Inzunza, Orellana Ricardo Andres v. M.E.I. (F.C.A., no. A-9-79), Heald, Ryan, Kelly, 25th July 1979 (not yet reported) reversing the upper Immigration Appeal Board's decision.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, December 19, 1978 Judgment pronounced: December 19, 1978 Reasons by: U. Benedetti (in English; 8 pp.), concurred in by A.B. Weselak and E. Teitelbaum Docket no.: 78-9213 Counsel: No one appeared.

---

9.15 Elio Umberto La Cruz v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - LATE FILING OF APPLICATION - JURISDICTION OF BOARD

JURISDICTION OF BOARD - REFUGEE - REDETERMINATION - LATE FILING OF APPLICATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(5), 70(1), 72 - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant filed an application for redetermination of his refugee claim more than seven days after he had been informed of the decision of the Minister.

**Held:** Application refused. The Board has no jurisdiction since the application for redetermination was not filed within the time prescribed in section 70 of the Immigration Act, 1976.

Holecsek, Jaroslav v. M.M.I. (F.C.A., no. A-382-75), Urie, Ryan, MacKay, 12th November 1975 (not yet reported); Duarte v. M.M.I. 6 I.A.C. 377; Prata v. M.M.I. [1976] 1 S.C.R. 376; Hudson Fashion Shoppe [1926] S.C.R. 26

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, May 10, 1979 **Judgment pronounced:** May 10, 1979 **Reasons by:** J.-P. Houle (in French; 2 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1064  
**Counsel:** No one appeared.

---

9.16 Maria Sandor v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Hungary, is claiming refugee status on the ground that she fears persecution because of her political opinion. She states that her political beliefs do not coincide with the political beliefs of the country or of the Communist Party. Before coming to Canada, the applicant went in Austria, lived there a couple of months, and went to West Germany where she purchased a forged passport to travel into Canada. She stated that should she return to Hungary now she would be put in jail because she refused to go back to Hungary from Austria.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant never took an active part in any political organization or demonstration, she was never arrested, detained or harassed by the Hungarian authorities and furthermore, she has been steadily employed in Hungary up until the date of her exit therefrom, and while she may be subject to prosecution upon her return, this is not a matter which can be considered to be persecution.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and F. Glogowski **Case heard:** in Toronto, May 14, 1979 **Judgment pronounced:** May 14, 1979 **Reasons by:** A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and F. Glogowski **Docket no.:** 79-9145 **Counsel:** No one appeared.

---

9.17 Cyril Lochan v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - PERSECUTION BECAUSE OF RACE AND POLITICAL OPINION - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(5), 70, 71

The applicant, a citizen of Guyana, is claiming refugee status on the ground that because of his Indian origin, he is persecuted by the Black race the ethnic group which has the political power in the country. The government, apparently, imposes inhumane conditions for living in an attempt to cause starvation for the citizens of Indian origin. Also he claims that he fears persecution because of his political opinion, but there was no proof to this effect.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee.

Coram: J.-P. Houle (Vice-Chairman), J.V. Scott and G. Loiselle Case heard: in Montreal, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: J.-P. Houle (in French; 5 pp.), concurred in by J.V. Scott and G. Loiselle Docket no.: 79-1078  
Counsel: No one appeared.

---

9.18 Riad Mohammad Hadid v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - STATELESS CLAIMANT - FEAR OF PERSECUTION BECAUSE OF RACE, NATIONALITY AND RELIGION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(5), 71(1)

The applicant is claiming refugee status on the ground that he is a stateless Palestinian born in Lebanon. He states that the Palestinians are discriminated against in Lebanon.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. When the applicant went to Kuwait in 1971, he was in possession of a travel document issued by the Republic of Lebanon which is issued for Palestinian refugees; he received a work permit in Kuwait and had it repeatedly renewed. He went from Kuwait to Germany where he made no claim to refugee status, he arrived in Canada as a visitor and only claimed refugee status two weeks after his arrival. There was no evidence of persecution either in Lebanon or Kuwait.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and G. Loiselle Case heard: in Toronto, July 5, 1979 Judgment pronounced: July 5, 1979 Reasons by: A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and G. Loiselle Docket no.: 79-9202  
Counsel: No one appeared.

---

9.19 Ana Maria Jorquera Mesina v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - TESTIMONIES CORROBORATING DECLARATION OF THE APPLICANT - IMMIGRANT ACT, 1976, S.C. 1976-77, C. 52, S. 70 - IMMIGRATION REGULATIONS, 1978, S. 40

The applicant, a citizen of Chile, is claiming refugee status on the ground that being an active member of the Socialist Party for at least four years before the coup of 1973, and after the coup, she was arrested, tortured and harassed. The house of her brother, where she lived was watched and her brother was arrested and imprisoned for six months. She, after the coup, was often summoned by the military police, to be questioned on her political activities. At the hearing, the testimonies of the sister of the applicant and of a citizen of Chile now living in Montreal, on the situation in Chile corroborated the declaration and the testimony of the applicant.

Held: The applicant is determined to be a Convention refugee. There are good reasons to think that the applicant would be persecuted if she had to go back in her country of origin.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, June 28, 1979 Judgment pronounced: July 5, 1979 Reasons by: G. Loiselle (in French; 5 pp.), concurred in by J.-P. Houle and R. Tremblay Docket no.: 79-1033  
Counsel: J. Westmoreland-Traoré, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

9.20 Minister of Employment and Immigration v. Alfredo Jackson Miceli

MOTION BY MINISTER - STAYED DEPORTATION ORDER - WITHDRAWAL OF APPEAL - DISCONTINUANCE OF APPEAL

JURISDICTION OF BOARD TO HEAR EVIDENCE IN REVIEW WHEN THERE IS A WITHDRAWAL - CONTINUING JURISDICTION - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 38(1), 46(1)(a) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 75(1), 76(2), (3)

The applicant, the Minister filed a motion asking the Board to cancel its order staying execution of the order of deportation made against the respondent. The fact that gave an opening to the motion is the withdrawal by the respondent of his appeal since he wants to go back in Italy, and the applicant argues that an appeal can only be discontinued prior to his disposition and in the instant case, there was a disposition of the appeal when the order was stayed by the Board.

**Held:** Rule 38(1) of the Immigration Appeal Board Rules, 1978, only provides for discontinuance of an appeal prior to the disposition of the appeal. Section 75(1) of the Immigration Act, 1976, clearly states that an appeal is disposed of when the Board directs that the execution of the removal order be stayed. Therefore, there appears to be no provision in the Immigration Act, 1976, Immigration Regulations, 1978 or the Immigration Appeal Board Rules, 1978 for the discontinuance of the proceedings once an appeal has been disposed of pursuant to section 75(1) of the Act.

The Board conducted an oral review of the case by receiving oral evidence and the Minister, the applicant, challenged the jurisdiction of the Board to hear any evidence in review, as a result of the letter of withdrawal.

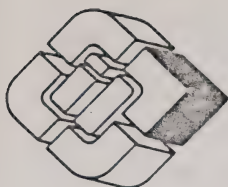
**Held:** The Board has a continuing jurisdiction during the period of the stayed order and this has been impliedly recognized by the Minister as a result of the motion filed herein. The Minister by filing an affidavit in support of his motion and exhibits attached thereto, has also impliedly recognized that the Board should hear evidence and consider evidence at the hearing of the motion.

Motion allowed, the stayed order is cancelled, the appeal is dismissed and the deportation order is directed to be carried out as soon as possible. Having considered the evidence, a further relief is not warranted, in spite of the periods of probation and suspended sentence granted to the respondent by the court and the opportunity to mend his ways during the course of the stayed order, he did not appear to have taken advantage of this opportunity. He is irresponsible and not properly motivated and if he continues with his criminal career he could be a danger to the Canadian public.

Meeser v. M.M.I. 1 I.A.C. 436.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D.E. Davey **Case heard:** in Toronto, June 4, 1979 **Judgment pronounced:** June 7, 1979 **Reasons by:** A.B. Weselak (in English; 10 pp.), concurred in by U. Benedetti and D.E. Davey **Docket no.:** 78-9063 **Counsel:** M. Prue, Esq., for the applicant; M. Drukarsh, Barrister and Solicitor, for the respondent.





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 10

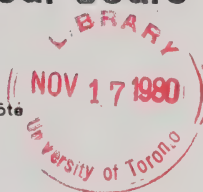
Date December 27, 1979

CAI  
MI 81

- I 52

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté



immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

#### Sponsorships

10.1	78-6149	Rai, Balbir Kaur v. Minister of Employment and Immigration
10.2	78-6073	Bains, Kulwinder Kaur v. Minister of Employment and Immigration
10.3	78-9078	Singh, Mohinder v. Minister of Employment and Immigration
10.4	79-9128	Manikam, Amorette Angira Kamini v. Minister of Employment and Immigration
10.5	78-9220	Spicuglia, Sebastiana v. Minister of Employment and Immigration
10.6	79-1013	Ferreira, Aires v. Minister of Employment and Immigration
10.7	79-6032	Sahota, Kehar Singh v. Minister of Employment and Immigration
10.8	78-9139	Alvi, Iqbal Nabi v. Minister of Employment and Immigration
10.9	79-6009	Lee, Yau Wah v. Minister of Employment and Immigration
10.10	79-9220	Mignott, Aneita Clementina v. Minister of Employment and Immigration

#### Refugees

10.11	79-9057	Adetuyi, Jones Adeniji v. Minister of Employment and Immigration
10.12	79-1089	Munteanu, Victor v. Minister of Employment and Immigration
10.13	79-1081	Saint-Eloi, Fritz v. Minister of Employment and Immigration
10.14	79-9212	Juarez, Pedro Enrique v. Minister of Employment and Immigration
10.15	79-3006	Nsiah, Peter Kwaku, v. Minister of Employment and Immigration
10.16	79-9149	Zamora, Hernan Eduardo v. Minister of Employment and Immigration
10.17	78-9211	Zarei, Parvis v. Minister of Employment and Immigration
10.18	79-9233	Vohra, Amarjit Singh v. Minister of Employment and Immigration
10.19	79-1103	Bernard, Sandra Léonie v. Minister of Employment and Immigration

#### Removal Order

10.20	79-9130	Erison, Denise Hope v. Minister of Employment and Immigration
-------	---------	---

#### Evidence

10.2	78-6073	Bains, Kulwinder Kaur v. Minister of Employment and Immigration
10.8	78-9139	Alvi, Iqbal Nabi v. Minister of Employment and Immigration
10.17	78-9211	Zarei, Parvis v. Minister of Employment and Immigration

#### Jurisdiction of Board

10.4	79-9128	Manikam, Amorette Angira Kamini v. Minister of Employment and Immigration
------	---------	---

10.1 Balbir Kaur Rai v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - SPONSOREE IS WITHOUT THE CONSENT OF THE MINISTER TO COME BACK - SPONSOREE CONVICTED OF SEVERAL OFFENCES - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), (2)(a), 57, 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18(1)(e)(ii)

The appellant filed an application to sponsor the admission into Canada of her husband. The sponsoree was once landed in Canada and so was his wife and son after he had sponsored them. He was ordered deported because he was convicted of offences such as impaired driving, assault causing bodily harm and false pretences. The appellant and her son were also included in that deportation order. After the deportation was directed because unsuccessful in an appeal to the Board, he disappeared in England. In the meantime, the appellant succeeded in her motion to reopen her appeal to the Board which quashed the order against her and her son and later they were granted Canadian citizenship. She now wishes to be reunited with her husband, for the sake of their son. All the time they were separated they corresponded and he always helped her financially.

Held: Appeal allowed on equitable grounds; the appellant's sincere wish to be reunited with her husband and the fact that she is a Canadian citizen, the interest of the son, the record of employment of the sponsoree; there is an indication that the sponsoree is more mature now and that his presence in Canada would not be detrimental to the interests and welfare of other Canadians.

C.M. Campbell (dissenting)

I would dismiss the appeal, I find no basis for granting special relief. I find no evidence of a sincere wish to be reunited with her husband and further, no evidence that he has a similar desire to be reunited with her. The one letter the Board has seen from him indicates an interest in her sponsorship appeal but from it we learn nothing of his feelings toward his wife and son. The thrust of the evidence is that both the sponsorship and the appeal were managed by his brother in the interests of the sponsoree's return to Canada. As for his supposed desire to be reunited with his son, he abandoned him to the care of his mother and in succeeding five years wrote him one letter and one alone, apparently at a time when it would be desirable evidence in this appeal. I find no acceptable evidence either of an employment record of the sponsoree when he was in Canada or that he might be a good family supporter now. I find no indication the sponsoree is now more mature. The fact that he was a fugitive in England for five years does not indicate maturity.

Coram: J.V. Scott (Chairman), C.M. Campbell (Dissenting) and F. Glogowski Case heard: in Vancouver, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: F. Glogowski (in English; 3 pp.), concurred in by J.V. Scott Dissenting reasons by: C.M. Campbell (9 pp.) Docket no.: 78-6149 Counsel: D.P. Pandia, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

10.2 Kulwinder Kaur Bains v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREE - EVIDENCE - PREPONDERANCE OF

EVIDENCE - PREPONDERANCE OF - SPONSORSHIP - AGE OF SPONSOREE - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART. I, SS. 31(1)(d), 36

The appellant filed an application to sponsor into Canada the admission of her parents and their dependents. The application was refused in respect of the father, because he could not establish that he was over 60 years of age. Extracts of the 1966 and 1971 voter's list were produced as evidence but because of inconsistency this evidence was not accepted. A memorandum from the interviewing officer in India, a letter from a doctor in India, and the testimony of the appellant at the hearing were all evidence considered by the Board.

Held: Appeal allowed on legal grounds. The preponderance of evidence should benefit the appellant, especially since her parents are apparently at a great disadvantage to obtain the proper documentation of their age from Pakistan.

C.M. Campbell (dissenting)

I would dismiss the appeal. The Board has seen no hard evidence of the ages of the parents of the appellant. The two officers in India had the advantage of seeing and speaking with them, something the Board does not have. On the other hand the Board has seen the sponsor and heard her evidence. Having carefully analysed all of the evidence I can only conclude that although it lacks specificity it, in general, supports the decision of the visa officers.

Coram: J.V. Scott (Chairman), C.M. Campbell (Dissenting) and F. Glogowski Case heard: in Vancouver, December 4, 1978 and May 29, 1979 Judgment pronounced: May 29, 1979 Reasons by: F. Glogowski (in English; 3 pp.), concurred in by J.V. Scott Dissenting reasons by: C.M. Campbell (4 pp.) Docket no.: 78-6073 Counsel: D.P. Pandia, Barrister and Solicitor, for the appellant; C.J. Dickey and F.D. Craddock, Esq., for the respondent.

### 10.3 Mohinder Singh v. Minister of Employment and Immigration

SPONSORSHIP - AGE AND RELATIONSHIP OF SPONSOREES - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor into Canada the admission of his parents, his brother and his sister. The application was refused in respect of the parents, because they had not established that they were over 60 years of age and it was refused in respect of the brother and sister because they had since the sponsorship application reached the age of 21. The record contains a memorandum from the counsellor in New Delhi; which memorandum summarizes the evidence before the Immigration Officer, his assessment of the evidence and his conclusions therefrom. The evidence was composed of affidavits, letters of search from the additional District Registrar, Births and Deaths, a marriage certificate, a school leaving certificate, a birth certificate, a 1966 and a 1971 voter's lists. Most of these documents were found unacceptable because their contents could not be verified, or were found to be fraudulent.

Held: Appeal allowed in law, in respect of the parents and brother. The refusal letter was not in accordance with the law. Under the Immigration Act, 1976, parents of any age can be sponsored. According to the evidence, there is no dispute that the brother was under twenty-one years at the proclamation of the Immigration Act, 1976.

Appeal dismissed in respect of the sister, she was over twenty-one years of age at the date of proclamation of the Immigration Act, 1976. She does not fall within the family class. The Board cannot consider the possibility of granting a special relief as this would extend the family class beyond the limits provided in the statute.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard: in Toronto, June 21, 1979 Judgment pronounced: June 21, 1979 Reasons by: A.B. Weselak (in English; 5 pp.), concurred in by U. Benedetti and D. Davey Docket no.: 78-9078 Counsel: M. Prue, Esq., for the respondent.

### 10.4 Amorette Angira Kamini Manikam v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE ORDERED DEPORTED FROM CANADA - SPONSOREE NOT IN POSSESSION OF A VALID VISA - CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - TRANSITIONAL - RETURNED TO CANADA WITHOUT THE CONSENT OF THE MINISTER

JURISDICTION OF BOARD - NOTICE OF APPEAL NOT FILED WITHIN THIRTY DAYS OF THE DATE OF REFUSAL - SEVERAL REFUSAL LETTERS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(d), (p), (t), 7(3), 18(1)(e)(vi), 22 - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(1)(c), 19(2)(d), 57

The appellant filed an application to sponsor into Canada the admission of her husband, which application was refused on the grounds that he was not in possession of a valid visa, he had been convicted of wounding causing bodily harm, and that he had returned to Canada without the consent of the Minister. There had been several refusal letters sent to the sponsor but not acknowledged by her. Finally she sent a letter to the Department inquiring as to the status of her application and a further refusal letter was mailed to her. She appealed this refusal letter. It was submitted by the respondent that because the appeal had not been filed within thirty days of the date of refusal, the Board lacked jurisdiction to hear the appeal.

**Held:** The Board has jurisdiction to hear the appeal. There was vova vice evidence from the appellant attesting to the fact that she had moved several times since filing her application for sponsorship and that each time she had faithfully notified the Department of Employment and Immigration of her change of address. Her evidence was uncontradicted by the respondent and was given under oath. The Notice of appeal had been filed within thirty days of the date of the last refusal letter.

**Held:** Appeal dismissed. The refusal letter is a valid letter made in accordance with the Immigration Act and Regulations. A number of letters were filed at the hearing of the appeal written by individuals in support of the appeal filed by the sponsor. The evidence as a whole reveals that the sponsoree was dishonest both with the R.C.M.P. and Immigration Officers. He showed no respect for Canadian law relating to immigration and has also been convicted of a serious offence under the Criminal Code of Canada. His marriage, one week after he had met his wife, would appear to be somewhat suspect although they both testified that it was a bona fide marriage. When the sponsor married the sponsoree she was aware of his status in Canada but nevertheless proceeded to marry him. Both are natives of Guyana and it would appear that there would be no hardship imposed on them were the sponsoree refused admission to Canada.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, July 19, 1979 **Judgment pronounced:** July 19, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9128 **Counsel:** M. Drukarsh, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

10.5 Sebastiana Spicuglia v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE ORDERED DEPORTED - RETURN TO CANADA WITHOUT THE CONSENT OF THE MINISTER - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1977-77, C. 52, S. 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18(1)(e)(vi)

The appellant filed an application to sponsor the admission into Canada of her husband, which application was refused on the ground that the sponsoree was deported from Canada and does not have the consent of the Minister to return. Since he first came to Canada the sponsoree has been in and out of the country several times.

**Held:** Appeal allowed on equitable grounds. The sponsor's immediate family are here, her children were born here, her father, now retired on a disability pension, testified that he owns his house, and both parents testified that they are willing to have their son-in-law live with them and to continue to care for the children while their daughter works. The appellant claims that she and her husband are in contact once monthly by letter and twice monthly by phone, that he is repentant and wants to be re-united with and provide for his family, he is not a criminal, he is not a threat to Canadian society and considerations were given to the appellant, her family and the two Canadian born children.

**In obiter** The Board would have preferred to allow this man to come to Canada on a temporary basis for two years and stay the decision until the expiry of this period to assess his sincerity. This option not being available under Section 79, the Board was of the opinion that to refuse the application and cause permanent separation of the family was too harsh.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard:  
in Toronto, July 17, 1979 Judgment pronounced: July 19, 1979 Reasons by: D. Davey  
(in English; 3 pp.), concurred in by A.B. Weselak and U. Benedetti Docket no.:  
78-9220 Counsel: D. Boni, Esq., for the appellant; L. Williams, Esq., for the  
respondent.

---

10.6 Aires Ferreira v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE, ADOPTED SON OF THE SPONSOR - VALIDITY OF ADOPTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 79 - IMMIGRATION REGULATIONS, 1978, SS. 4, 5

The appellant filed an application to sponsor the admission into Canada his adopted son, which application was refused on the ground that the son was not validly adopted for the purpose of immigration. The definition of son, pursuant to the Immigration Act, 1976 refers to a person who has been adopted before he has reached the age of thirteen years old. The sponsoree, in this case, was nineteen years old at the time of his adoption.

Held: Appeal dismissed. Although there is no doubt that the sponsor is legally the father of the sponsoree by the law of the Province of Quebec, and indeed by the internal law of Canada, he is not his father for the purpose of immigration, since he cannot bring himself within the requirements of the Immigration Regulations, 1978 as to members of the family class. Since he is not a member of the family class, he is divested of any right to pursue his appeal pursuant to section 79(2)(b) of the Immigration Act, 1976.

Coram: J.V. Scott (Chairman), G. Loiselle and E. Teitelbaum Case heard: in Montreal, July 17, 1979 Judgment pronounced: July 23, 1979 Reasons by: J.V. Scott (in English; 3 pp.), concurred in by G. Loiselle and E. Teitelbaum Docket no.: 79-1013 Counsel: A. de S. Muszka, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

10.7 Kehar Singh Sahota v. Minister of Employment and Immigration

SPONSORSHIP - IDENTITY OF SPONSOREE - ADOPTION - FOREIGN LAW - PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d) - IMMIGRATION REGULATIONS, 1978, S. 2(1) - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

The appellant filed an application to sponsor into Canada the admission of his adopted son, which application was refused on the ground that there was not satisfactory evidence establishing that the sponsoree was legally adopted by the sponsor. At the hearing, an expert witness in Indian Law was called and he cited relevant, in his opinion, paragraphs from different legal Acts in India and excerpts from legal and historical books dealing with adoption in Punjab. The appellant claims that being a Jat, he is not bound by the Hindu Adoptions and Maintenance Act, 1956 as he adopted the sponsoree according to tribal customs of Jats in Punjab.

Held: Appeal dismissed in law. There is doubts that the sponsoree is in fact the adopted son of the appellant and it flows from this that he is not a member of the family class and eligible for sponsorship pursuant to the Immigration Act and Regulations. The Hindu Adoptions and Maintenance Act, 1956 is very specific in exempting certain territories and certain religious groups. Punjab is not exempt and apparently residents of Punjab of Sikh religion are bound in adoption matters by the said Act. In his evidence, the appellant stated that he is of the Sikh religion. Also there are serious doubts whether the alleged adoption in 1966 which was apparently reconfirmed in 1972, but registered in 1978, was a proper adoption even in the Jat tradition. The fact that the adopted boy has been living with his natural parents for nearly all his life and that his parents gave him for adoption although he was their only son at that time, raised doubts. Furthermore, the appellant at that time, had five sons and one daughter. Was he then in need of having an heir.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard:  
in Vancouver, June 22, 1979 Judgment pronounced: August 28, 1979 Reasons by:  
F. Glogowski (in English; 8 pp.), concurred in by C.M. Campbell and G. Loiselle Docket  
no.: 79-6032 Counsel: I. Sara, Barrister and Solicitor, for the appellant;  
C.J. Dickey, Esq., for the respondent.

---

10.8 Iqbal Nabi Alvi v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE SPONSOREE - BIRTH CERTIFICATE - FURTHER EVIDENCE - DOCUMENT  
AUTHENTICATING THE BIRTH CERTIFICATE

EVIDENCE - SPONSORSHIP - AGE OF THE SPONSOREE - BIRTH CERTIFICATE - FURTHER EVIDENCE -  
DOCUMENT AUTHENTICATING THE BIRTH CERTIFICATE - IMMIGRATION ACT, 1976, S.C. 1976-77, C.  
52, S. 79 - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(d), 36

The appellant filed an application to sponsor the admission into Canada of her parents,  
her two brothers and her sister. The application was refused in respect of the sister  
on the ground that she had not established that she was under the age of 21 at the date  
of the application. A birth certificate issued by the District of Health Office at  
Faisalabad was produced at the first hearing. As a result of this hearing, the  
respondent was requested to forward this document to the authorities in Pakistan in  
order to have it verified as to authenticity. At the second hearing, a document  
confirming the authenticity of the birth certificate was produced.

Held: Appeal allowed on legal grounds. This further uncontroverted evidence has  
satisfied the Board of the date of birth of the sponsoree and that she would not have  
acquired the age of twenty-one years at the date of the sponsorship application and  
determines that she is within the family class.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard:  
in Toronto, May 10, 1979 and September 5, 1979 Judgment pronounced: September 5, 1979  
Reasons by: A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and  
E. Teitelbaum Docket no.: 78-9139 Counsel: C.A. Rashid, Barrister and Solicitor,  
for the appellant; L. Williams, Esq., for the respondent.

---

10.9 Yau Wah Lee v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF POSSESSION OF OFFENSIVE WEAPONS - OFFENCE COVERED  
IN CANADA UNDER THE CRIMINAL CODE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.  
19(1)(c), 79 - CRIMINAL CODE, R.S.C. 1970, C. C-34, S. 85

The appellant filed an application to sponsor into Canada the admission of his parents,  
brothers and sister. The application was refused in respect of one brother only on the  
ground that he had been convicted of possession of a dangerous weapon.

Held: Appeal dismissed. The refusal is based solely on the conviction for possession  
of an offensive weapon. This offence would be covered in Canada under section 85 of the  
Criminal Code. In consequence the sponsoree is inadmissible.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard:  
in Vancouver, September 17, 1979 Judgment pronounced: September 19, 1979 Reasons  
by: C.M. Campbell (in English; 2 pp.), concurred in by F. Glogowski and G. Loiselle  
Docket no.: 79-6009 Counsel: P. Wong, Student-At-Law, for the appellant; I.D. Munn,  
Esq., for the respondent.

---

10.10 Aneita Clementina Mignott c. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NO LONGER WITHIN THE SPONSORABLE CLASS HE WAS AT TIME OF THE APPLICATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, PART I, S. 31(1)(b) - IMMIGRATION REGULATIONS, 1978, S. 4(f)

The appellant filed an application to sponsor into Canada the admission of her fiancé. In the time lapse between the filing of the appeal and the hearing of the appeal, the sponsor married her fiancé, so he was at the time of the hearing her husband. When the applicant was examined by the Immigration officer or visa officer, he was examined under the considerations applicable to his acceptance as a fiancé not to his acceptance as a spouse.

Held: Appeal dismissed. The sponsoree's relationship with the sponsor has changed from "fiancé" to "husband", the Board has no valid application before it, as the appeal relates to the admission to Canada of an application for permanent residence of a fiancé, not a husband.

Cuppige, Constance v. M.M.I. (I.A.B. 76-9270), Weselak, Benedetti, Petrie, September 28, 1976 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, September 5, 1979 Judgment pronounced: October 17, 1979 Reasons by: A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 79-9220 Counsel: M. Bouchard, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

10.11 Jones Adeniji Adetuyi v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 45, 70, 71

The applicant, a citizen of Nigeria, filed an application to refugee status on the ground that being a member of the Nigerian National Democratic Party he leaked information to the Biafrans, an act for which he claims he was wanted by the authorities and which put his life in jeopardy. He claims that the leaders of this underground party were arrested an executed, but he continued, during that time and later, to work for the government until he left for Canada. He also did not have any difficulty in renewing his passport.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The Board does not believe that a government in pursuit of someone would continue to employ him, issue him a passport, allow him to exist without harassment and then renew the passport without question. By the applicant's own testimony, he was never arrested, detained or questioned. He arrived in Canada five years ago, it is inconceivable that in five years he would not have found a way to report to the Canadian authorities his fears and to try to establish his claim to political refugee status.

Coram: A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum Case heard: in Toronto, March 5, 1979 Judgment pronounced: March 5, 1979 Reasons by: E. Teitelbaum (in English; 5 pp.), concurred in by A.B. Weselak and D. Davey Docket no.: 79-9037

---

10.12 Victor Munteanu v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - REFUSAL TO DO HIS MILITARY SERVICE - FEAR OF PERSECUTION BECAUSE OF DESERTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 71

The applicant, formerly a citizen of Roumania but subsequently a citizen of Israel, claims refugee status on the ground that he was accused of desertion, he did not do his military service in his country of adoption, Israel. He claims he has a medical certificate from Roumania declaring that he has a heart condition and that certificate is supposed to be accepted all over the world, but was not in Israel. He alleges that because he was Christian, the authorities declared him able to do his military service. Before his military service started, he fled in Germany to arrive a month later in Canada, as a visitor. He after his arrival presented to the Immigration authorities a promise to marry a Canadian citizen. He never married that person but married another girl after he was asked for an inquiry.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. He tried everything he could to avoid doing his military service in his country of adoption, Israel. After his arrival in Canada he again has tried everything to circumvent the Immigration Act in order to become a permanent resident.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski and G. Loiselle **Case heard:** in Montreal, June 19, 1979 **Judgment pronounced:** June 19, 1979 **Reasons by:** G. Loiselle (in French; 11 pp.), concurred in by J.-P. Houle and F. Glogowski **Docket no.:** 79-1089

---

10.13 Fritz Saint-Eloi v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18(1)(e)(viii)

The applicant is claiming refugee status on the ground that he was a member of a certain social group. Apparently he was persecuted because he knew three false secret agents "tontons macoutes". He stated that he had to protect them and take them on the boat he was working on since they wanted to exile in Miami. The application to refugee status was made after the applicant's third entry in Canada.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. From a study of the record and the testimony of the applicant at his examination under oath there are so many contradictions and discrepancies that no other decision can be made.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski and G. Loiselle **Case heard:** in Montreal, June 19, 1979 **Judgment pronounced:** June 19, 1979 **Reasons by:** G. Loiselle (in French; 8 pp.), concurred in by J.-P. Houle and F. Glogowski **Docket no.:** 79-1081

---

10.14 Pedro Enrique Juarez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(5), 70(1), 71(1)

The applicant is claiming refugee status on the ground that because he was an active member of the Socialist Party in Chile he was, after the coup, arrested, detained, beaten and was repeatedly questioned about his political activities and asked to name other socialist fellow employees. In 1974, he left Chile for Argentina where his wife and his two children joined him because he claimed that they were continuously visited by the Military while in Chile. He worked in Argentina for over four years, then went back in Chile and came into Canada after his brother had arranged for a passport for him.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant was well settled in Argentina and had received Immigrant status before arriving at the decision to return to Chile. When he was back in Chile, he was never confronted or arrested by the police, he was able with the help of his brother to obtain a passport, he did not have any problems in purchasing his own ticket nor in obtaining an exit visa from the police at the airport. During his four years in Argentina, he had the opportunity to apply for refugee status or for immigrant status at the Canadian Embassy. It appears that he was encouraged by the action of his brother to leave Argentina and to apply in Canada for refugee status, as he has already two brothers and a sister in Canada.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and F. Glogowski Case heard: in Toronto, July 4, 1979 Judgment pronounced: July 4, 1979 Reasons by: U. Benedetti (in English; 10 pp.), concurred in by A.B. Weselak and F. Glogowski Docket no.: 79-9212

---

10.15 Peter Kwaku Nsiah v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45, 70

The applicant, a citizen of Ghana, is claiming refugee status on the ground that because he was a member of the Progress Party although as a public servant he could not take an active part in politics. He was, after the military coup in 1972, arrested, detained, beaten and subjected to humiliating treatment. The applicant had two examinations under oath, the first conducted before the proclamation of the Immigration Act, 1976 and the second after proclamation. There were some discrepancies between these two examinations and between the evidence given at the first examination and that given at the hearing of the application. Also at the hearing a member of Amnesty International was called as a witness and described the conditions in Ghana, so far as they are known to Amnesty International. Letters from his wife, brother and friend were also produced as evidence of the persecution he feared if he returned to his country.

Held: The applicant is determined not to be a Convention refugee. Since his credibility is doubtful, to say the least, the expert's testimony cannot help him. Indeed, although it must be emphasized that his counsel's integrity is beyond question, this case had all the aspects of a manufactured case.

Coram: J.V. Scott (Chairman), D. Davey and F. Glogowski Case heard: in Ottawa, April 18, 1979 Judgment pronounced: July 9, 1979 Reasons by: J.V. Scott (in English; 11 pp.), concurred in by D. Davey and F. Glogowski Docket no.: 79-3006 Counsel: J.B. Payne, Barrister and Solicitor, for the applicant; W.L. Bernhardt, Esq., for the respondent.

---

10.16 Hernan Eduardo Zamora v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70(2), 71

The applicant, a citizen of Chile, is claiming refugee status on the ground that because he was an active member of the Socialist Party, he was refused admittance to the University twice. Although he did not have any trouble with the authorities in 1973 and 1974 he was arrested by the police in 1977 and was arrested several times after that, he was beaten, tortured and threatened. He had two examinations under oath, some events are not described in the first examination and also many discrepancies are to be found.

Held: Application allowed to proceed and the applicant determined not to be a Convention refugee. The applicant had an opportunity to remember the facts of his political activities, arrest, torture and the events after his arrest much better at his first examination. A person can have difficulty in remembering because of fears at the time but the applicant's description of his political activities, his school activities and dismissals, his working periods, his description of his arrest and beating, his period after his arrest, his reporting to the military authorities, the way he obtained his passport and the amount he had to pay, vary from the first examination to the second and to the hearing of his application. As during the second examination under oath, counsel for the applicant requested that the transcript of the first examination be entered into evidence, the Board took into consideration the first examination in reaching its decision as part of the documents mentioned in section 70(2) of the Immigration Act, 1976.

Fuentes Garcia, Rolando Vicente v. M.E.I. (F.C.A., no. A-123-79), Heald, Ryan, Kelly, July 26, 1979 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard: in Toronto, July 16, 1979 Judgment pronounced: July 17, 1979 Reasons by: U. Benedetti (in English; 8 pp.), concurred in by A.B. Weselak and D. Davey Docket no.: 79-9149  
Counsel: Miss P. Poole, Esq., for the applicant; M. Prue, Esq., for the respondent.

---

10.17 Parvis Zarei v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - COMMON KNOWLEDGE

EVIDENCE - COMMON KNOWLEDGE - REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70(1), 71(1)

The applicant, a citizen of Iran, is claiming refugee status on the ground that being a member and the director of a Communist Party, the Iranian Students' Association, he had demonstrated in front of the Iranian Embassy in the United States. He returned to Iran after that demonstration and was arrested and interrogated about his activities against the Shah in the United States. He then came in Canada after visiting several countries, and claims that the present regime in Iran is now a Muslim dictatorship and has stated itself to be anti-communist and apparently persons with Communist sympathies are persecuted.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant never applied for refugee status in several countries that he visited and only when he was returned to Canada by the Immigration authorities did he apply. No evidence has been introduced to show that the applicant is an active member of the Communist Party and that the new regime has knowledge of it.

F. Glogowski (dissenting)

I would allow the application to proceed in order that the applicant be given an opportunity at the oral hearing to convince the Board whether he has in fact "a well-founded fear of persecution for reasons of his political opinion". I am of the opinion that he, being a supporter of Communist ideology, might have "a well-founded fear of persecution". It is common knowledge that the present regime in Iran is based on strong principles of the Muslim religion and treats supporters of Communism as enemies of the new religious state.

Maslej v. M.M.I. [1977] 1 F.C. 194

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and F. Glogowski (Dissenting) Case heard: in Toronto, July 17, 1979 Judgment pronounced: July 17, 1979 Reasons by: U. Benedetti (in English; 2 pp.), concurred in by A.B. Weselak Dissenting reasons by: F. Glogowski (2 pp.) Docket no.: 78-9211

10.18 Amarjit Singh Vohra v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 70

The application is claiming refugee status on the ground that he was an active member and supporter of the Congress Party in the Punjab Province. He claims that, as such, he was giving favours to members of the Congress Party, because he held a key post in the government.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. He travelled to Canada as a visitor, remained here illegally for over two years and worked without permission, knowing that he was breaking the Immigration laws of this country. He never asked for political asylum until he was arrested, by Immigration authorities and threatened with a deportation order at the inquiry. It appears further from the record that it is rather a frivolous application made only after the inquiry was started to secure permanent residence in Canada perhaps for economical reasons.

Coram: F. Glogowski (Vice-Chairman), D. Davey and E. Teitelbaum Case heard: in Toronto, July 31, 1979 Judgment pronounced: July 31, 1979 Reasons by: F. Glogowski (in English; 5 pp.), concurred in by D. Davey and E. Teitelbaum Docket no.: 79-9233

---

10.19 Sandra Léonie Bernard v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that being a member of the People's United Front a party against the government in Jamaica, she has been persecuted, victimized and threatened. As a member of that group, she was working on research for publications on an irregular basis and in her examination under oath, she states she did not participate in any other form of action during that period.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The People's United Front is a legal party which ran in an election. The applicant has never been harassed or arrested. The statutory declaration is much stronger than the examination under oath and facts concerning other people, not the applicant, have been emphasized and used to build the applicant's case.

Villarroel, Alfredo Nelson Salvatierra v. M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, 23rd March 1979 (not yet reported).

Coram: J.V. Scott (Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, August 1, 1979 Judgment pronounced: August 1, 1979 Reasons by: R. Tremblay (in English; 5 pp.), concurred in by J.V. Scott and G. Loiselle Docket no.: 79-1103

---

10.20 Denise Hope Erison v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF OFFENCES UNDER THE NARCOTIC CONTROL ACT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(i), (ii), 72(1)(b) - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, SS. 3(1), 4(1)

The appellant, a permanent resident, was ordered deported on the grounds that she had been convicted of offences under the Narcotic Control Act namely possession and trafficking. She is married to a Canadian citizen, but proceedings for divorcing that man are instituted, she also has two children one of which is Canadian born. In her nine years in Canada, she appears to have lived mainly on welfare and in a so called "drug subculture", there were no witnesses called to speak on her behalf, no letters adduced from any respectable resident of Canada with the exception of two letters from the Community Mental Health Clinic and from the Family Children's Services, letters indicating that she is seeking help from professional people in her personal and family problems.

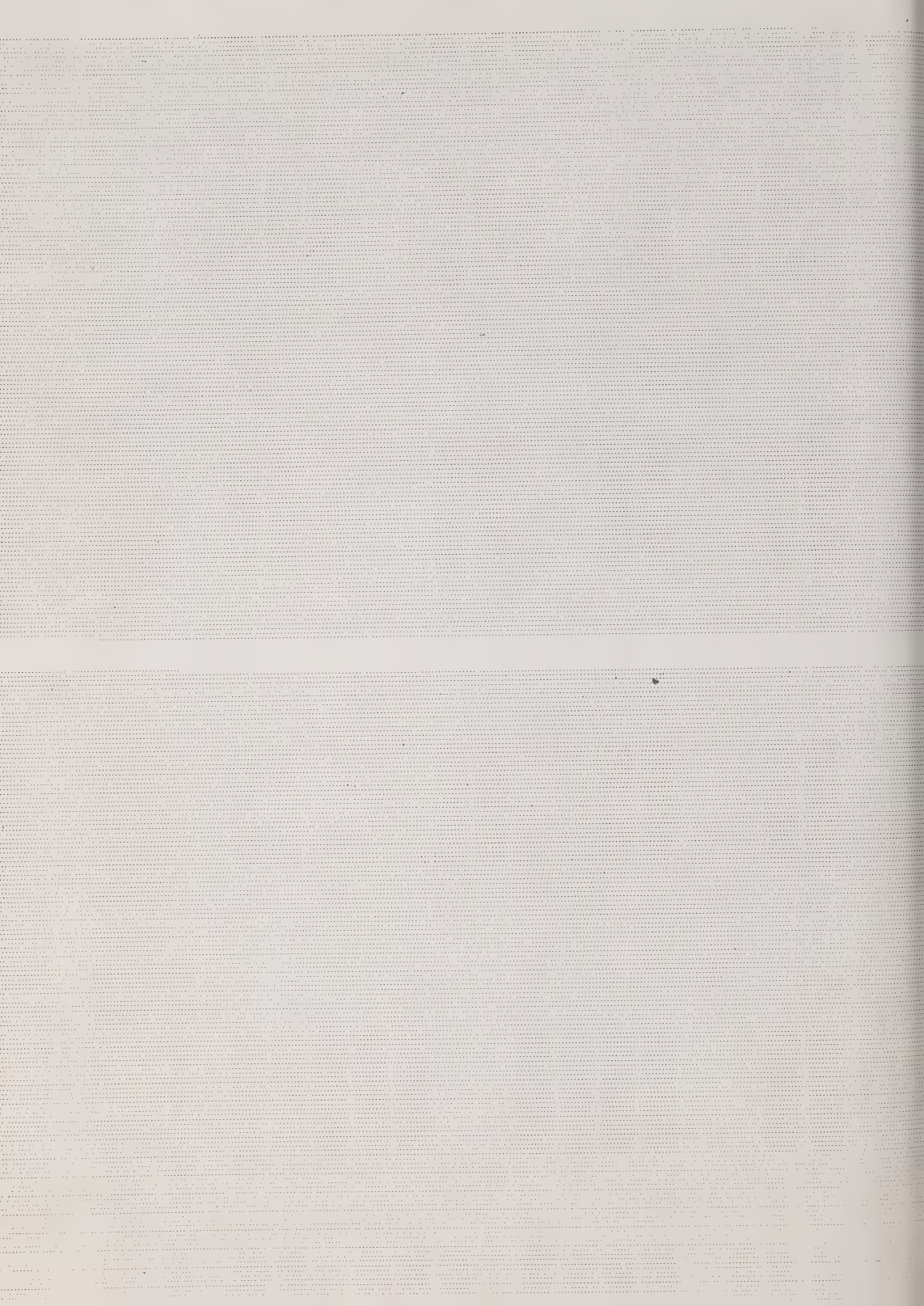
Held: Appeal dismissed. The appellant has no roots in this country and she cannot apparently successfully cope with the problems facing her here. She has her parents and two brothers in the United States who perhaps could give her some moral support if she really wishes to detach herself from the "drug subculture" in which she apparently still lives. It appears that her husband is fond of both children and took good care of them while she was incarcerated. But the Board cannot foresee whether he might or might not be a better guardian for the children than the appellant with her criminal record and not too stable relationship with different men.

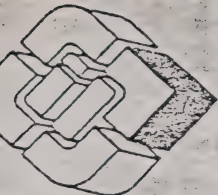
Coram: F. Glogowski (Vice-Chairman), D. Davey and E. Teitelbaum Case heard:  
in Toronto, August 9, 1979 Judgment pronounced: August 20, 1979 Reasons by:  
F. Glogowski (in English; 12 pp.), concurred in by D. Davey and E. Teitelbaum Docket  
no.: 79-9130 Counsel: J.W.W. Neeb, Barrister and Solicitor, for the appellant; M.  
Prue, Esq., for the respondent.

---

ISSN 0225-1620

LAG





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

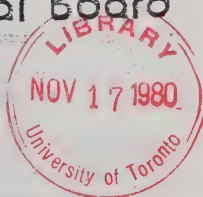
No. 11

Date January 25, 1980

CAI  
MI 8/  
- 152

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté



Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

11.1 79-9031 Singh, Narinder Kaur (Pabla) v. Minister of Employment and Immigration

11.2 79-6059 Chaudhary, Ilyas v. Minister of Employment and Immigration

11.3 79-6036 Kim, Ho Sik v. Minister of Employment and Immigration

11.4 79-1002 Pean, Marie Thérèse v. Minister of Employment and Immigration

11.5 79-3001 Dhawan, Kasturi Lal (Mr. and Mrs.) v. Minister of Employment and Immigration

11.6 79-9205 Williams, Denzil Llewelyn v. Minister of Employment and Immigration

11.7 79-6002 Arshad, Mohammad v. Minister of Employment and Immigration

11.8 79-6093 Tang, Lai Keng v. Minister of Employment and Immigration

11.9 79-6078 Geselbracht, Will Wyn v. Minister of Employment and Immigration

#### REFUGEES

11.10 79-9072 Forti, Jorge Alexis v. Minister of Employment and Immigration

11.11 79-9172 Campos, Roberto Alejandro Soto v. Minister of Employment and Immigration

11.12 79-9173 Venegas, Juan Gabriel Silva v. Minister of Employment and Immigration

11.13 79-9109 Pasmino, Hector Edgardo Pinto v. Minister of Employment and Immigration

11.14 79-9102 Munoz, Miguel Angel Acuna v. Minister of Employment and Immigration

11.15 79-1017 Nunez Veloso, Felix Salatiel and his wife Nunez, Maria Raquel v. 79-1017-A Minister of Employment and Immigration

11.16 79-1116 Josefacki, Kaziemierz v. Minister of Employment and Immigration

11.17 79-1117 Cuevas-Puente, Juan de la Cruz v. Minister of Employment and Immigration

11.18 79-1055 Drouskas, Theodosios v. Minister of Employment and Immigration

#### DEPORTATION ORDER

11.19 74-7046 Baky, Osama Abdel v. Minister of Employment and Immigration

#### MOTION

11.19 74-7046 Baky, Osama Abdel v. Minister of Employment and Immigration

#### REMOVAL ORDER

11.20 79-9030 Gyal, Otto Andrew v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

11.1 79-9031 Singh, Narinder Kaur (Pabla) v. Minister of Employment and Immigration

11.4 79-1002 Pean, Marie Thérèse v. Minister of Employment and Immigration

11.5 79-3001 Dhawan, Kasturi Lal (Mr. and Mrs.) v. Minister of Employment and Immigration

#### EVIDENCE

11.5 79-3001 Dhawan, Kasturi Lal (Mr. and Mrs.) v. Minister of Employment and Immigration

#### NOTICE OF INTENT FILED BY MINISTER

11.20 79-9030 Gyal, Otto Andrew v. Minister of Employment and Immigration

**SPONSORSHIP - AGE OF SPONSOREE - TRANSITIONAL**

**JURISDICTION OF BOARD - RIGHT OF APPEAL - CITIZENSHIP OF SPONSOR - WHETHER THE SPONSOR NEEDED TO BE A CANADIAN CITIZEN AT THE TIME OF THE SPONSORSHIP APPLICATION OR ONLY AT THE TIME OF THE NOTICE OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2) - IMMIGRATION REGULATIONS, PART I, S. 31(1)(d)**

The appellant filed an application to sponsor into Canada the admission of her parents, her sister and brother. The application was refused in respect of the father because he had failed to establish that he was sixty years of age or over. At the hearing of the appeal, a question relating to the jurisdiction of the Board was raised, whether the sponsor had to be a Canadian citizen at the time she filed her sponsorship application or whether she had to be a Canadian citizen at the time she filed her Notice of Appeal.

**Held:** Considering the wording of section 79(2) of the Immigration Act, 1976, as long as the appellant is a Canadian citizen at the time of filing of her Notice of Appeal, the Board has jurisdiction to entertain the appeal.

**Held:** Appeal allowed on legal grounds with respect to the father, mother and the brother, and is dismissed with respect to the sister. As the appellant's Notice of Appeal was filed subsequent to the date of proclamation of the Immigration Act, 1976 and the Immigration Regulations, 1978, her father and mother, receiving the benefit of this new legislation are now in the prescribed family class and sponsorable because they now do not have to be proven as being over sixty years old. As for the children they too are entitled to the benefit of the new legislation and as their parents are now in the sponsorable family class they could be considered as dependants if, as at the 10th April, 1978, they were under the age of twenty-one years. The age of the brother was not disputed, it is found to be under twenty-one years old, therefore sponsorable and the age of the sister is also undisputed and she is found to be over twenty-one years old, therefore unsponsorable.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, March 21, 1979 **Judgment pronounced:** March 21, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9031 **Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

11.2 Ilyas Chaudhary v. Minister of Employment and Immigration

**SPONSORSHIP - IDENTITY OF THE SPONSOREE - SPONSOREE NOT IN THE FAMILY CLASS - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS NOT APPLICABLE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 6(1)(a)**

The appellant filed an application to sponsor into Canada his father, mother and sister. The application was refused in respect of the sister because she has failed to establish that she was under twenty-one years of age at the time of the application. A secondary school certificate was produced, it was the only document showing a birth date, that birth date appeared to have been altered and the Education Department described this document as being bogus.

**Held:** Appeal dismissed, since it has not been established that the sponsoree is a member of the family class, consideration on equity grounds is not applicable.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay **Case heard:** in Calgary, July 23, 1979 **Judgment pronounced:** July 23, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and R. Tremblay **Docket no.:** 79-6059 **Counsel:** W.W. Geselbracht, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIME - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79(2)(b)

The appellant filed an application to sponsor into Canada the admission of his mother, father and sister, which application has been refused in respect of the father because he has been convicted of a crime, namely, false pretence. The sponsoree would be eligible to apply for entry into Canada by Minister's permit in 1982, three years hence and at that time the sister would be twenty years old and would still be within the family class.

Held: Appeal dismissed. The father is apparently a successful business man, established with his wife and younger daughter in their home in Korea where they can enjoy a family association with their two married sons, their wives and their grandchildren.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay Case heard: in Calgary, July 25, 1979 Judgment pronounced: July 25, 1979 Reasons by: C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and R. Tremblay Docket no.: 79-6036 Counsel: R.A. Miles, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

SPONSORSHIP - OBLIGATION OF FINANCIAL SUPPORT - SPONSOREE NOT IN POSSESSION OF A VALID VISA.

JURISDICTION OF BOARD - STATUS - SPONSOREE TO BE ADMITTED FOR A TEMPORARY PURPOSE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79

The appellant filed an application to sponsor into Canada the admission of her mother, which application was refused because she would not be able to fulfil the written undertaking for her care and support. Another ground for refusing the application was that the sponsoree was not in possession of a valid visa. At the hearing, the sponsor asked that her mother be permitted to stay in Canada for one year only, she was not claiming a status as a permanent resident anymore.

Held: Appeal dismissed. The real ground of appeal is to obtain a status as a visitor for one year so that the mother, the sponsoree, be able to work as a babysitter when the sponsor would be at work. There is no provision in section 79 of the Immigration Act nor in any other section of the Act giving such a jurisdiction to the Board.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, August 24, 1979 Judgment pronounced: August 24, 1979 Reasons by: J.-P. Houle (in French; 6 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 79-1002 Counsel: P. Laviolette, Barrister and Solicitor, for the appellant; J.R. St. Louis, Esq., for the respondent.

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF THE ADOPTION - INDIAN CUSTOMARY ADOPTION - BURDEN OF PROOF - TRANSITIONAL - SPONSOREE WITHIN SPONSORABLE CLASS PURSUANT TO IMMIGRATION REGULATIONS, PART I

EVIDENCE - FOREIGN LAW - FOREIGN STATUTE REFERRED TO - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(f), 31(4), 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, S. 9

The appellants filed an application to sponsor their adopted daughter into Canada, which application was refused on the ground that she did not produce satisfactory evidence to establish that she was legally adopted by the sponsors. The Notice of Appeal was signed by the spouse of the sponsor whereas the sponsorship application was made by the male appellant and signed by her as the spouse. The Adoption Deed from India does not contain the signature of the natural mother, nor does it mention that the mother of the child has concurred with the child's adoption, it has not been registered and Immigration officials in New Delhi were not able to ascertain its contents or verify the said document. At the hearing the appellants produced five affidavits from persons attesting their presence at the adoption ceremony, one of them comes from the natural mother confirming her consent to the adoption. She states in her affidavit that she did not sign the Adoption Deed because according to the Hindu Adoptions and Maintenance Act, the husband (father) is competent to give a child in adoption. At the hearing, there was also a letter produced from the appellants' lawyer in India that he was satisfied that the Deed of Adoption while attested by him as Notary Public, was a valid document as the Deed of Adoption, in his opinion, "is not compulsorily registerable. Attestation of a Notary is deemed adequate."

**Held:** As to the Notice of Appeal signed by spouse of sponsor, the Board took jurisdiction. It is noted that the refusal letter was addressed to both sponsors, that the Notice of Appeal, although only signed by the spouse, gives in the first line as appellant the name of both spouses. It appeared that this document was properly served on the Immigration Officer and according to her evidence accepted without any comments.

Appeal allowed on legal grounds. Considering the evidence in its entirety, the Board is satisfied that the sponsoree was adopted by the sponsors, she was therefore, at the time when the sponsored application on her behalf was made, within the sponsorable class as described by the Immigration Act and Regulations being in force at that time. The appellants appeared to be very respectable Canadian citizens and, as the record indicates, acted bona fide all the time in their dealings with the Immigration authorities since they filed their first application.

Qutubuddin, Syed v. M.E.I. (I.A.B. 79-6012), Scott, Campbell, Glogowski, April 25, 1979 (not yet reported); Lit, Jaswant Singh v. M.E.I. (I.A.B. 76-6003), Benedetti, Scott, Legaré, May 30, 1978 (See CLIC, No. 1.40, March 20, 1979).

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and G. Loisel **Case heard:** in Ottawa, June 5, 1979 **Judgment pronounced:** August 29, 1979 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by R. Tremblay and G. Loisel **Docket no.:** 79-3001 **Counsel:** M.S. Shaikh, Barrister and Solicitor, for the appellants; W.L. Bernhard, Esq., for the respondent.

# 11.6 Denzil Liewelvn Williams v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE, ADOPTED SON - FOREIGN ADOPTION - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 79(2)(a) - IMMIGRATION REGULATIONS, 1978, SS. 4(b), (g)

The appellant filed an application to sponsor into Canada the admission of his adopted son, which application was refused on the ground that the adopted son was not in the sponsorable class. According to the definition of son pursuant to the Immigration Act, 1976, the adoption has to be made before the sponsoree has reached thirteen years old.

**Held:** Appeal dismissed. The sponsoree is not the issue of a marriage as his natural parents were unmarried and are still unmarried and as he was formally adopted when he was over thirteen years of age, the sponsoree therefore does not qualify as a member of the family class as the son of the sponsor. Having found that the sponsoree is not within the family class as prescribed in the Immigration Regulations, 1978 the Board has no jurisdiction to consider if there exist compassionate or humanitarian considerations that warrant the granting of special relief.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, September 4, 1979 Judgment pronounced: September 5, 1979 Reasons by: A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 79-9025 Counsel: S. Ramkissoon, Esq., for the appellant; M. Prue, Esq., for the respondent.

---

11.7 Mohammad Arshad v. Minister of Employment and Immigration

SPONSORSHIP - IDENTITY OF THE SPONSOREE - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 9(3) - IMMIGRATION REGULATIONS, 1978, SS. 4(a), 31(1)(a), 36

The appellant filed an application to sponsor into Canada the admission of his wife, his daughter and his son. The application was refused in respect of the wife because she had failed to answer all questions truthfully, she had failed to provide satisfactory evidence to establish her relationship to the sponsor, her son and her daughter. The certificates of registration of the marriage and the births are unavailable in Pakistan. From the record, on the sponsor's entry into Canada, the relationship of the appellant to the sponsorees was misrepresented, he declared himself to be single without dependents, and in the processing of this application bogus birth certificates for his children were submitted. At the hearing, a close friend of the appellant testified, he had visited the home of the appellant's father in Pakistan and there were no doubts that it was the family of the appellant.

Held: Appeal allowed on legal grounds. The close friend was a most credible witness. Having admitted his earlier deceit the appellant showed remorse for what he had done and the Board believes that his evidence at the instant hearing was truthful.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard: in Vancouver, September 20, 1979 Judgment pronounced: September 20, 1979 Reasons by: C.M. Campbell (in English; 4 pp.), concurred in by F. Glogowski and G. Loiselle Docket no.: 79-6002 Counsel: Z. Haque, Barrister and Solicitor, for the appellant; I.D. Munn, for the respondent.

---

11.8 Lai Keng Tang v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE, A DANGER TO PUBLIC HEALTH - SPONSOREE WOULD BE A PUBLIC CHARGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), 79(2)(a) - IMMIGRATION REGULATIONS, 1978, S. 22 - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 18, 19

The appellant filed an application to sponsor for admission to Canada her father, mother and brother which application was refused in respect of the father because he had pulmonary tuberculosis. The only primary document in the record is a diagnosis made by one doctor only.

Held: Appeal allowed on legal grounds. A reading of the Act, the Regulations and the Rules makes it clear that Parliament intended thorough and detailed investigation take place before a negative that a medical decision is made and that the decision when made be concurred in by a second doctor. It is also clear that in the instant case the Immigration and Health Department authorities met almost none of their obligations before making the refusal.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard: in Vancouver, September 19, 1979 Judgment pronounced: September 20, 1979 Reasons by: C.M. Campbell (in English; 4 pp.), concurred in by F. Glogowski and G. Loiselle Docket no.: 79-6093 Counsel: R. McPhee, Student-At-Law, for the appellant; I.D. Munn, Esq., for the respondent.

---

SPONSORSHIP - SPONSOR HAS OTHER RELATIVE THAT CAN BE SPONSORED - JURISDICTION OF BOARD - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, SS. 4(1), (h)(iii)

The appellant filed an application to sponsor for admission to Canada his brother which application was refused because it appeared that the sponsor's parents could have been sponsored instead of the brother. On the record, there are statutory declarations prepared by both parents renouncing any intention of their becoming permanent residents of Canada.

Held: Appeal dismissed. Although there are statutory declarations by both parents renouncing to become permanent residents of Canada, and the fact that under these circumstances, it would be reasonable for the sponsoree to be allowed entry; Parliament did not make this provision and it is not within the power of the Board to extend the Statute or the Regulations.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard: in Vancouver, September 24, 1979 Judgment pronounced: September 26, 1979 Reasons by: C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and G. Loiselle Docket no.: 79-6078 Counsel: I.D. Munn, Esq., for the respondent.

11.10 Jorge Alexis Porti v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(5), 70(1), 71(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that he was a member of the Socialist Youth Party. In 1972, he enlisted in the police force, and was forced shortly after the coup to enlist in the army and to commit inhuman acts, he participated in the massacre at the community of Ro Chi Min.

Held: Application refused to proceed, and the applicant is determined not to be a Convention refugee. The applicant lacks credibility, the stories related to the Immigration officer and on his declaration are so entirely different that it is almost impossible to believe that they were told by the same ex-police officer. The examination was conducted 22 days after he arrived in Canada. It is understandable that because of nervousness, a person can make a mistake in the date or fail to explain in minute detail what he encountered in his country but when the facts are completely different in their context, it leaves no doubt that the person applying to become a refugee in Canada is an unreliable witness. Even his story in regard to his marriage and his profession is different.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and R. Tremblay Case heard: in Toronto, May 28, 1979 Judgment pronounced: May 28, 1979 Reasons by: U. Benedetti (in English; 12 pp.), concurred in by A.B. Weselak and R. Tremblay Docket no.: 79-9072

11.11 Roberto Alejandro Soto Campos v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 45, 70(1), 71(1)

The appellant, a citizen of Chile, is claiming refugee status on the ground that he was a member of the Communist Youth Party throughout his high school. As an active member he used to put up signs and propaganda, he was expelled from school and refused admission to the University. In 1978, the military people searched his home and he, his father and two uncles were detained for a month and a half and threatened. They had to report once a week after they were set free by the military. He stated that a few days later the police was looking for them again. At the time of the examination, his father was still working for the railroad as a helper in the laboratory.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant lacks credibility, there are discrepancies between his declaration and his examination under oath.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and G. Loiselle Case heard:  
in Toronto, June 27, 1979 Judgment pronounced: June 27, 1979 Reasons by: U.  
Benedetti (in English; 5 pp.), concurred in by A.B. Weselak and G. Loiselle Docket  
no.: 79-9172

---

11.12 Juan Gabriel Silva Venegas v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 70(2), 71(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that he was involved in the Socialist Party. He was a friend of a member of the MIR and apparently in 1977, he was informed that the military raided his home and found a picture of this friend taken with him, he was afraid that if an investigation was carried out, the military would find out that they were friends and consequently he would be very easily identified.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant's story lacks credibility. Although the applicant was facing a serious situation, he attended work up to 1977, he never tried to escape to nearby countries or to find refuge in the Ecuadorian Embassy, as his friend had done. The applicant did not have any problems in obtaining a certificate of good conduct nor in purchasing a travel ticket, which ticket was routed Santiago-Toronto-Montreal-Lisbon-Madrid.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and G. Loiselle Case heard:  
in Toronto, June 27, 1979 Judgment pronounced: June 27, 1979 Reasons by: U.  
Benedetti (in English; 4 pp.), concurred in by A.B. Weselak and G. Loiselle Docket  
no.: 79-9173

---

11.13 Hector Edgardo Pinto Pasmino v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - ACTIVE SUPPORTER BUT NOT A MEMBER OF A POLITICAL PARTY - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 45(1), (5), 70(1), 71(1)

The applicant, a citizen of Chile, filed a claim to refugee status on the ground that because he was an active supporter of the 1967-68 Allende campaign and a worker in the pro-government faction he was, after the coup in 1973, detained for 37 days, beaten and interrogated. He was working in Chile as the secretary of the telephone company and as such was involved in 1972, in the authorized installation of a telephone cable system for the military that would function separately from the existing system.

He alleged that the main government grievance against him was the military installation. Apparently, as a preventive measure he was caught up in a general government round-up every May 1 (Labour Day) and September 11 (anniversary of military takeover) until 1977. He also claimed to have been detained one or two days during these round-ups and beaten until 1975-76. By his account, he was dismissed from his job in December 1973. He apparently made three application for jobs, but was not hired because of military intervention.

Held: The application was allowed to proceed and the applicant was determined not to be a Convention refugee. Although, the applicant was unsuccessful in finding a job, he, however, did work at a variety of odd jobs. These unsuccessful applications for only three jobs between December 1973 to July 1975 is insufficient evidence of political persecution, though it may be an indication of economic discrimination. He claims he went to the Canadian Embassy to apply for an immigrant visa but not as a refugee. Each time he applied for a visa he gave as his reasons economic hardship. He had ample opportunity to discuss the matter of his alleged persecution with the Canadian authorities during these visits to the Embassy but failed to do so.

Coram: A.B. Weselak (Vice-Chairman), E. Teitelbaum and D. Davey Case heard: in Toronto, July 12, 1979 Judgment pronounced: July 12, 1979 Reasons by: E. Teitelbaum (in English; 4 pp.), concurred in by A.B. Weselak and D. Davey Docket no.: 79-9109 Counsel: Ms. M. Adamache, Law Student, for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

11.14 Miguel Anael Acuna Munoz v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(2)

The applicant, a citizen of Chile, is claiming refugee status on the ground that while in college he was a member of the Federation of Revolutionary Students. He was arrested before the coup by the naval intelligence officers for security reasons and was interrogated about his activities. He claims that he was also arrested after the coup, was put under house arrest and surveillance, was isolated at work and not permitted to talk with his fellow workers; apparently this situation lasted for about two years.

Held: Application allowed to proceed and the applicant determined not to be a Convention refugee. The applicant's testimony in regard to his first arrest and detention before the coup d'etat, is, as the respondent pointed out in his submissions, quite illogical. Also he was not entirely truthful during his examination and sometimes evasive with some of his answers. Before he decided to come to Canada and claim refugee status, he visited several countries around the world and not only Peru, Ecuador and Argentina.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, July 3, 4 and 24, 1979 Judgment pronounced: July 24, 1979 Reasons by: U. Benedetti (in English; 12 pp.), concurred in by A.B. Weselak and E. Teitelbaum Docket no.: 79-9102 Counsel: Ms. M. Pacheco, Esq., for the applicant; M. Prue, Esq., for the respondent

---

11.15 Felix Salatiel Nunez Veloso and his wife Maria Raquel Nunez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY THE AUTHORITY IN PLACE, BECAUSE OF A REFUSAL TO COMMIT INHUMAN ACT - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 3(1), 45(1), (5), 70(1)

The applicants, citizens of Chile, are claiming refugee status on the ground that the male applicant was, in his country of origin, forced to commit acts contrary to human dignity and contrary to his moral, religious and political convictions. These acts, apparently were committed under the threat of death made by the authority in place. The refusal letter from the Minister was a joint letter covering the refusal for the man and his wife. This fact was not argued or even noticed at the hearing by either Party and the Board assumed that it had been done for expeditious purposes. At the hearing, the respondent alleged that the applicant arrived in Canada in possession of a passport, but the latter testified that his passport was obtained by fraud not within the common channel that a Chilean passport is usually obtained.

Held: Applicants are determined to be Convention refugees. From the evidence on the record and from the male applicant's testimony in a public hearing, it was established in a coherent, plausible and credible manner that the inhuman acts committed by the applicant were committed under threats from the authority in place.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, August 23, 1979 Judgment pronounced: August 24, 1979 Reasons by: J.-P. Houle (in French; 6 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 79-1017 and 79-1017-A Counsel: G. Roy, Barrister and Solicitor, for the applicants; J.R. St. Louis, Esq., for the respondent.

---

11.16 Kaziemierz Josefacki v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF POLITICAL OPINION - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(1), (4), (5), 70(1), (2), 71(1), (4)

The applicant, a citizen of Poland, is claiming refugee status on the ground that he was imprisoned by the secret police when he was himself a member of the Police Force. He states that he was unjustly accused of sabotage and treason. He was apparently sentenced to 16 years of prison which sentence was reduced to three years and subsequently he was on parol. He alleged that due to his situation, he had problems finding a job and when he had a job he was barred from higher ranks, that he is always the subject of supervision from the police, that he is often asked to answer questions, and that he will always be considered a suspect by the Polish authorities.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The claim presented by the applicant is frivolous and is made only to obtain the status of permanent residence, therefore it constitutes an abusive resort to section 70 of the Immigration Act, 1976.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and E. Teitelbaum Case heard: in Montreal, August 28, 1979 Judgment pronounced: August 28, 1979 Reasons by: J.-P. Houle (in French, 13 pp.), concurred in by R. Tremblay and E. Teitelbaum Docket no.: 79-1116

---

11.17 Juan de la Cruz Cuevas-Puente v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - PERSECUTION ACCORDING TO CONVENTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70(2), 71(1)

The applicant, a citizen of the Dominican Republic, is claiming refugee status on the ground that he was once an active member of a Social group in which he was printing different papers of propaganda. He left the Party and he claims that since he left the Party he was victim of several harassments by Party members and even was threatened with death if he did not rejoin the Party.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The persecution according to the Convention does not have to come necessarily from the authority governing the country but can come from a group which has the consent of the authority in place, but there was no proof adduced that the Dominican authorities even tacitly approved the "harassment" allegedly suffered by the applicant.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and E. Teitelbaum Case heard: in Montreal, August 28, 1979 Judgment pronounced: August 28, 1979 Reasons by: J.-P. Houle (in French; 5 pp.), concurred in by R. Tremblay and E. Teitelbaum Docket no.: 79-1117

---

11.18 Theodosios Drouskas v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF THE JEHOVAH'S WITNESS - IMMIGRATION ACT 1976, S.C. 1976-77, C. 52, S. 2(1)(a) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 15(1)(b)

The applicant, a citizen of Greece, is claiming refugee status on the ground that because he is a Jehovah's Witness he was unwilling to present himself for military service which he was required to do, and he as a result fears that if he goes back to Greece, he would be put in jail. Apparently the Jehovah's Witnesses are not permitted to take up arms. There was a document that was never proved setting out a decision of the Athens Court Martial and filed by the applicant at his examination under oath that is to the effect of saying that those who in view of religious convictions refuse to take up arms are obliged to fulfill the obligation of an unarmed term or training for a time period twice that of armed service.

Held: The application having been allowed to proceed, the applicant is determined not to be a Convention refugee. On his own evidence and on the basis of the document filed, it appears that any Greek citizen refusing to do his military service for whatever reason is subject to punishment, but there is some allowance made for a refusal based on religious convictions though a double term of service is required in such a case. The applicant entirely failed to prove that as a Jehovah's Witness he would be any worse off than any other person refusing to do their military service for any reason.

Daniolos v. M.M.I. 2 I.A.C. 434

Coram: J.V. Scott (Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, August 2, 1979 Judgment pronounced: October 11, 1979 Reasons by: J.V. Scott (in English; 6 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 79-1055  
Counsel: A. Theodassiadis, Esq., for the applicant; J.R. St. Louis, Esq., for the respondent.

---

11.19 Osama Abdel Bakry v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF AN OFFENCE UNDER THE CRIMINAL CODE - HAS BECOME AN INMATE OF A PRISON - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(ii), (iii), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14, 15(1)(a)

The appellant, a permanent resident, was ordered deported on the ground that he was convicted of an offence under the Criminal Code, namely he was found guilty of "intend to wound" on the person of his wife and was sentenced to seven years in prison.

Held: Appeal dismissed, order of deportation directed to be executed as soon as practicable, no grounds for granting special relief on compassionate or humanitarian considerations. The appellant has a family and obligations in Egypt, is completely without roots in this country since his wife, here in Canada, has commenced the necessary proceedings to obtain a divorce and there is clearly no possibility of a reconciliation.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti Case heard:  
in Vancouver, June 8, 1976 Judgment pronounced: June 8, 1976 Reasons by:  
C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and U. Benedetti  
Docket no.: 74-7046 Counsel: F.D. Craddock, Esq., for the respondent.

Osama Abdel Bakry v. Minister of Employment and Immigration

MOTION - REOPENING OF APPEAL - UNAVAILABILITY OF EXPERT WITNESSES - APPELLANT WITHOUT COUNSEL - NATURAL JUSTICE

The applicant filed a motion to reopen an appeal from a deportation order. The main ground of his motion is that the appeal should be reopened because the Immigration Appeal Board did not give full consideration to the fact that the applicant was a deserter from Egypt and that he would face harsh punishment if he was indeed deported. At a reopened hearing the appellant would bring expert witnesses to testify with respect to the seriousness of the situation in which he would find himself if returned to Egypt. Counsel suggests the appeal be reopened because natural justice was denied, since the appellant was without counsel and the appellant had difficulty with the interpreter.

Held: Motion refused. The evidence in the affidavit of the applicant is inconsistent with the statement he made under oath at the appeal hearing in that he is a deserter. The fact that he claims he is a deserter is new evidence, but this evidence could certainly have been available at the time of the appeal hearing. The fact that at a reopened hearing he would bring expert witnesses to testify on the situation if he would return to Egypt is certainly new evidence unavailable at the original appeal, therefore the first condition in Chan is met.

The second criteria in Chan, that is the evidence sought to be introduced is of such a nature that if proved would furnish sufficient reason for reconsideration of the court's original disposition of the appeal, has not been met since whether the applicant is a deserter or a draft-dodger and in difficulty with the authorities in Egypt because he failed to do his military service is not by itself a basis for admission to Canada. Therefore the Board would not change its original decision on that ground.

Although the applicant was without counsel, the transcript shows clearly that the Board gave him every opportunity to state his case. The only instance advanced of this concerns whether he was a deserter or a draft-dodger. This has already been dealt with. It is not satisfied that this problem resulted from a failure on the part of the interpreter but had it been, this would not have altered the decision.

F. Glogowski (dissenting)

I would allow the motion, I am of the opinion that the applicant's motion meets the second criteria of Chan. Although I am in agreement with the majority of the Board that the fact that a person has to face the consequences of failure to meet one's obligations as a citizen of one's own country cannot be by itself a basis for admission to Canada or granting special relief, I cannot agree that it is an "iron rule", which cannot be mitigated in special circumstances of each particular case. Otherwise a person who broke the law in his native country would not have an opportunity to be granted special relief by this Board even if these laws were not fair according to our standards or International Law.

Chan v. M.M.I. 6 I.A.C. 429

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski (Dissenting) and D. Patrie Case heard:  
in Vancouver, October 16, 1978 Judgment pronounced: October 20, 1978  
Reasons by: C.M. Campbell (in English; 5 pp.), concurred in by D. Patrie Dissenting  
Reasons by: F. Glogowski (2 pp.) Docket no.: 74-7046 Counsel: H. Rankin,  
Barrister and Solicitor, for the applicant; F.D. Craddock, Esq., for the respondent.

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF SEVERAL OFFENCES - NOTICE OF INTENT FILED BY MINISTER - MISREPRESENTATION OF A MATERIAL FACT - ALL THE CIRCUMSTANCES OF THE CASE

NOTICE OF INTENT FILED BY MINISTER - MISREPRESENTATION OF A MATERIAL FACT - ALL THE CIRCUMSTANCES OF THE CASE - REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF SEVERAL OFFENCES - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 37 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(ii), (e), (3), 72, 73, 76(1) - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 294(a), 306(1)(b), 312(1)(a) - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 18(1)(e)(viii)

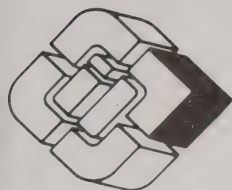
The appellant, a citizen of the United Kingdom, arrived in Canada after having been sponsored by his mother, he was single at the time but was married prior to his coming into Canada and failed to report his marriage to an Immigration Officer in England. Subsequent to his arrival he was convicted of several crimes, and the present order of deportation resulted. The fact that he was granted landing by reason of misrepresentation of a material fact was not a ground included in the deportation order. The respondent, the Minister of Employment and Immigration filed a notice of intent pursuant to Rule 37 of the Immigration Appeal Board Rules requesting the Board to make a deportation order adding to the present ground, the ground that the appellant was granted landing by misrepresentation of a material fact, the order the adjudicator should have made.

Held: Appeal allowed on equitable grounds. The notice of intent filed by the Minister which can be treated as equivalent to a counter-appeal pursuant to section 75 is allowed and pursuant to section 76(1) the Board quashes the deportation order and orders deported the appellant on two grounds that is pursuant to section 27(1)(d)(ii) and section 27(1)(e) of the Immigration Act, 1976. The Board was favourably impressed with all the witnesses at the hearing and with the attitude and demeanour of the appellant. It appears that he was finally settled down in a satisfactory manner and that the chances of his returning to crime are minimal.

M.M.I. v. Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522; Hilario v. M.M.I. [1978] 1 F.C. 697.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard:  
in Toronto, July 10, 1979 Judgment pronounced: July 10, 1979 Reasons by:  
A.B. Weselak (in English; 7 pp.), concurred in by U. Benedetti and E. Teitelbaum  
Docket no.: 79-9030 Counsel: S. Segal, Barrister and Solicitor, for the appellant;  
W.A. MacIntyre, Esq., for the respondent.





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P5P2 (613)236-9766

No. 12

Date February 25, 1980

## Notes of Recent Decisions

*ICC*

rendered by the

## Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

12.1

Tracy Lee Chiang v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF CRIMES - NO HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(d), 7(1)(f), 18(1)(e)(ii) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(b), 79, 125(3), 128

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused on the ground that he had committed several times crimes involving moral turpitude namely keeping a common gaming house.

**Held:** Appeal dismissed. The sponsoree has acquired no assets in Canada and does not appear to have established himself in anyway in Canada. He has a poor work record and his associations while he has been in Canada have not been of the best. The sponsor knew at the time that she married the sponsoree that he was only here as a visitor and, therefore, it must be presumed that she had known of the consequences which may have resulted from her marriage.

Enem, Rhonda Leslie v. M.E.I. (I.A.B. 77-9470), Weselak, Benedetti, Petrie, May 10, 1978 (See CLIC; No. 1.24, March 20, 1979).

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, November 16, 1978 **Judgment pronounced:** July 17, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 78-9116 **Counsel:** W.C. Deaken, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

12.2

Dawn Lynne Najia v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF AN OFFENCE - MARRIAGE OF CONVENIENCE - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79(2)(b)

The appellant filed an application to sponsor into Canada the admission of her husband, a citizen of Lebanon, which application was refused on the ground that the sponsoree had been convicted of a crime, namely theft of groceries valued at less than \$200.00. The sponsoree was in Canada on a Minister's permit as he was a student and it was alleged that he decided to marry the sponsor only after he was told that his Minister's permit would not be extended. Apparently, he got married in order that he could be sponsored for readmission to Canada. In making its decision the Board has the testimony of the appellant to consider and hers alone. There is none other.

**Held:** Appeal dismissed. The hearing gave the sponsor an opportunity to establish that an emotional commitment to her husband existed and that the marriage was not entered into solely for the purposes of the sponsoree's re-entry into Canada as a landed immigrant. She did not establish this.

F. Glogowski (dissenting)

I would allow the appeal on equitable grounds. The appellant, in my opinion was a credible witness, there is no doubt in my mind that this is a bona fide marriage. Her deep interest in her husband's future is corroborated inter alia by her efforts through her counsel to obtain a pardon for her husband's offence under the Criminal Code. I considered also the opinion of the local Immigration officer who met personally and interviewed the sponsoree who said he believed that it was a legitimate marriage. The sponsoree could help the appellant emotionally and financially to cope with the situation in which she found herself after breaking up her twelve-year relationship with the father of her son. The fact that she stated she would go to Lebanon if her appeal failed, shows also a great interest in her husband, having knowledge of the political situation in Lebanon.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski (Dissenting) and R. Tremblay **Case heard:** in Calgary, July 24, 1979 **Judgment pronounced:** July 27, 1979 **Reasons by:** C.M. Campbell (in English; 5 pp.), concurred in by R. Tremblay **Dissenting reasons by:** F. Glogowski (2 pp.) **Docket no.:** 79-6046 **Counsel:** M.L. Moore, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

12.3 Gurdev Singh v. Minister of Employment and Immigration

SPONSORSHIP - REASONS FOR REFUSAL MUST BE COMMUNICATED TO THE SPONSOR AND SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 41(1)

The appellant filed an application to sponsor into Canada the admission of his parents, his brother and his sister. The application was refused in respect of the brother but there was no reason given.

**Held:** Appeal allowed on legal grounds. The purpose of section 79 of the Immigration Act, 1976 and of section 41 of the Immigration Regulations, 1978 is clearly to enable an appellant (sponsor) of the case he has to meet, therefore, the reasons for the refusal must be given with such clarity and such intelligible terms as to inform the sponsor of the sections under which the sponsoree is prohibited from admission to Canada. There is nothing in the refusal letter in the instant case to indicate the reason for the refusal of the sponsoree's admission into Canada.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, September 10, 1979 **Judgment pronounced:** September 10, 1979 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9127 **Counsel:** R. Bailey, Esq., for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

12.4 Tarlochan Singh Dulla v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREE - TRANSITIONAL - INTERPRETATION ACT, R.S.C. 1970, C. I-23, S. 35(3) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17 - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(d), 36 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 125(3) - IMMIGRATION REGULATIONS, 1978, SS. 4(c), 5(1), 6(1)

The appellant filed an application to sponsor into Canada the admission of his parents and his two brothers, which application was refused in respect of the father because he did not establish that he was over sixty years of age. The sponsorship application and the Notice of Appeal were made under the Immigration Act, 1952 and the appeal was made under the Immigration Act, 1976, about fifteen months after it was proclaimed. Based on recent judgments of the Federal Court of Appeal, it was decided that when an appeal arises from action dealt and concluded by Immigration authorities under the former Act, the Board on appeal should deal with the case also under the same Act. In this instant case, it was decided that the appeal would be dealt with under the Immigration Act, 1952 (repealed) and the Immigration Appeal Board Act (repealed). Therefore, the main issue, and the only one, in this appeal, is the age of the sponsor's father, namely whether he was 60 years old at the time of the filing of the sponsorship application.

**Held:** Application refused. There has been no evidence before the Board that should alter the position taken by the Visa Officer in respect of the establishment of the age of the head of the proposed immigrant family. There was evidence on the record that the voter's lists and school certificates were altered, and all of these documents, being so tampered with, were done so for the interest of the proposed immigrants.

Grewal, Nasib Kaur v. M.E.I. (I.A.B. 77-3092), Glogowski, Tremblay, Teitelbaum, August 10, 1978 (See CLIC, No. 1.33, March 20, 1979) (overruled); M.E.I. v. Lyle, William Claude (F.C.A., no. A-651-78), Pratte, Heald, Le Dain, June 13, 1979 (unreported, See CLIC #29.1); M.E.I. v. Bakir, Omar Ahmad Mohammed (F.C.A., no. A-566-78), Urie, Ryan, Kelly, June 27, 1979 (not yet reported).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay  
**Case heard:** in Vancouver, July 18, 1979  
**Judgment pronounced:** October 10, 1979  
**Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by C.M. Campbell and R. Tremblay  
**Docket no.:** 78-6040  
**Counsel:** M.D. Vick, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

## 12.5 Rita Mageau Amer v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIME - SPONSOREE DEPORTED FROM CANADA - SPONSOREE NOT IN POSSESSION OF THE MINISTER'S CONSENT - SPONSOREE NOT WITHIN THE FAMILY CLASS

SPONSORSHIP - VALIDITY OF CANADIAN MARRIAGE - ALLEGATION OF BIGAMY - BURDEN OF PROOF - PROOF OF VALIDITY OF PRIOR FOREIGN MARRIAGE - FOREIGN LAW

JURISDICTION OF BOARD IN EQUITY - FINDING THAT SPONSOREE IS OR IS NOT ADMISSIBLE AS A MEMBER OF THE FAMILY CLASS

EVIDENCE - PROOF OF FOREIGN MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), (i), (2)(d), 79(1), (2)(b) - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(a) - QUEBEC CIVIL CODE, SS. 118, 148 - THE MARRIAGE ACT, 1977, S.O. 1977, C. 42, S. 31

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused on the grounds that he was convicted of a crime, that he did not have the Minister's consent to come into Canada because he had been previously ordered deported and that he was not a member of the family class since he was not legally married to the sponsor because at the time he married the sponsor he was still married to another woman. Shortly after he arrived in Canada he commenced living with the sponsor and he married her in 1977. A Canadian marriage certificate from the province of Ontario is part of the record. There is also on record a marriage certificate attesting to a marriage in Lebanon between the sponsoree and a Lebanese girl. He obtained a divorce for this Lebanese marriage after the supposed marriage of the sponsoree to the sponsor.

**Held:** Appeal dismissed. The sponsoree is not within the sponsorable class. The marriage between the sponsor and the sponsoree is void ab initio and the sponsoree would be recognized as the husband of the sponsor neither by the law of Quebec (probably the place of domicile of the sponsor) nor by the law of Ontario, the lex loci celebrationis. The sponsoree is not the husband of the sponsor and never has been.

The validity of the sponsoree's Lebanese marriage has not been strictly proved in the manner which would be required in a Court having jurisdiction in dissolution of marriage. The Board takes the position that it does not require those. The Lebanese marriage has been sufficiently established and its validity was not contested.

The Board undoubtedly has jurisdiction to find that the sponsoree is or is not admissible as a member of the family class. This tribunal is not called upon to annul a marriage, - that is within the jurisdiction of the appropriate Provincial Court - nor is it doing so. Having found that the sponsoree is not a member of the family class, the right of appeal based on equitable grounds falls to the ground since if the Board were to exercise its jurisdiction on these grounds the result would be to expand beyond the members of the family class.

Mignott, Aneita Clementina v. M.E.I. (I.A.B. 79-9220), Weselak, Benedetti, Teitelbaum, October 17, 1979 (not yet reported); Ajah, Chantal Sylvie v. M.E.I. (I.A.B. 77-3076), Scott, Glogowski, Campbell, November 30, 1977 (See CLIC, No. 1.8, March 20, 1979); Goyette, Michel André v. M.E.I. (I.A.B. 78-1073), Houle, Glogowski, Tremblay, March 23, 1979 (See CLIC, No. 5.12, August 3, 1979); Bhatti, Kurban Singh v. M.E.I. (I.A.B. 78-6164), Campbell, Davey, Teitelbaum, February 23, 1979 (See CLIC, No. 6.5, August 24, 1979); Williams, Denzil Liewelyn v. M.E.I. (I.A.B. 79-9205), Weselak, Benedetti, Teitelbaum, September 5, 1979 (not yet reported); Garcia, Elsa v. M.E.I. (I.A.B. 79-9013), Weselak, Benedetti, Teitelbaum, October 18, 1979 (not yet reported).

**Coram:** J.V. Scott (Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, August 1, 1979 **Judgment pronounced:** October 12, 1979 **Reasons by:** J.V. Scott (in English; 8 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1030  
**Counsel:** F. Philibert, Barrister and Solicitor, for the appellant; J.R. St. Louis, Esq., for the respondent.

---

12.6

Elsa Garcia v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR ALREADY MARRIED - SPONSOREE ALREADY MARRIED - FOREIGN DIVORCE - DOMICILE - INTENTION OF ESTABLISHING PERMANENT RESIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(b) - IMMIGRATION REGULATIONS, 1978, SS. 4(f), 6(d)

The appellant filed an application to sponsor into Canada her future husband which application was refused on the ground that the future husband (fiancé) was not in the sponsorable class. Apparently, the sponsor married the sponsoree in California but at the time of the marriage the sponsor was still validly married to another man in the Philippines, and so was the sponsoree to another woman in the Philippines. She had obtained a divorce in the United States but she at the time of the sponsorship application was advised to obtain a divorce decree in Ontario which she did, but this decree of divorce was granted after she was married to the sponsoree. Her counsel conceded that the marriage in the United States was invalid because it pre-dated the decree absolute. As for the first marriage of the sponsoree, he obtained too a divorce in the United States. Counsel for the appellant, at the hearing, argued strenuously that the divorce obtained in the United States by the sponsoree was a valid divorce, and should be recognized in Ontario by reason of either his acquisition of domicile in the State of California or by reason of the fact that he had a real and substantial connection with this state.

**Held:** Appeal dismissed, the Board is unable to exercise its equitable jurisdiction as to do so would expand beyond the members of the family class described in the Immigration Act, 1976 and the Immigration Regulations, 1978. In spite of the fact that the sponsoree is alleged to have filed an application for permanent residence in the United States which was refused, he had no intention to establish permanent residence in the United States but rather that he was using the United States to obtain a divorce and his intention was to establish his residence in Canada. He had no real and substantial connection with the State of California as his status was only that of a visitor and that his residence in California was never intended by him to be of a permanent nature. The divorce obtained in California is invalid and as his first marriage is still a subsisting relationship and is a legal impediment to the proposed marriage of the sponsor and her fiancé, he therefore does not qualify as a fiancé under the provisions of Regulation 4(f) and Regulation 6(d) of the Immigration Regulations, 1978. He is not in the family class sponsorable under the Immigration Act, 1976 and the Immigration Regulations, 1978. With respect to the Board's discretionary powers, the Board is unable to exercise its jurisdiction as to do so it would expand beyond the members of the family class.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, October 18, 1979 **Judgment pronounced:** October 18, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9013 **Counsel:** M. Singer, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

12.7

Paulette Maurine Grant v. Minister of Employment and Immigration

SPONSORSHIP - WHETHER THE DEPENDANT INCLUDED IN THE SPONSORSHIP IS A MEMBER OF THE FAMILY CLASS - LEGITIMACY

SPONSORSHIP - SPONSOREE HAD NO SINCERE AND RESPONSIBLE INTENTIONS TO ESTABLISH IN CANADA - SPONSOREE HAD NOT ANSWERED QUESTIONS TRUTHFULLY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(a), 3, 8(1), (2), 79 - IMMIGRATION REGULATIONS, 1978, SS. 4, 41

The appellant filed an application to sponsor into Canada the admission of her husband. The sponsorship application which was filed by the sponsor included the so-called son of the sponsoree. The application for permanent residence filed by the sponsoree included as his dependant the so-called son.

The application was refused in respect of the husband on the grounds that he had failed to establish his sincere and responsible intentions in respect to the proposed sponsorship, and in that he had not answered truthfully all questions put to him by the Immigration officer.

**Held:** Appeal dismissed on legal grounds with respect to the so-called son of the sponsoree. He is not a member of the family class sponsorable by the appellant (sponsor). While he is the natural son of the sponsoree, he is nevertheless the issue of a common law relationship which existed between the sponsoree and his mother; the sponsoree was never married to the mother and therefore, he is not the legitimate son of the sponsoree.

**Held:** Appeal allowed in respect of the husband on legal grounds and on equitable grounds. The refusal letter does not comply with the mandatory requirements in the Act and the Regulations. The first ground sets out the burden of proof required of a person seeking admission to Canada and the presumption that everyone seeking admission to Canada is presumed to be an immigrant. This ground does not convey to the appellant any reason why the sponsoree is prohibited from admission. As to the second ground there is nothing in the record to indicate to the appellant or to the Board what specific questions were answered untruthfully by the sponsoree. On the evidence, this is a valid marriage and not a marriage of convenience.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey, E. Teitelbaum **Case heard:** in Toronto, October 30, 1979 **Judgment pronounced:** October 30, 1979 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:** 79-9313 **Counsel:** S. Ramkissoon, Esq., for the appellant; D. Taylor, Esq., for the respondent.

---

12.8 Olga Desrene Wint v. Minister of Employment and Immigration

**SPONSORSHIP - DOUBTS ON THE FULFILMENT OF UNDERTAKING - SPONSOREE WOULD BE A PUBLIC CHARGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 19(1)(b), 79**

The appellant filed an application to sponsor into Canada the application for admission of her mother which application was refused on the grounds a) that she had failed to establish her sincere and responsible intentions in respect to the proposed sponsorship (s. 8(1) of the Act) and b) that she would be unable to support the sponsoree (s. 19(1)(b) of the Act). The sponsoree has five dependent children in her home country. The respondent said in submissions that the general presumption outlined in section 8(1) of the Act is not a ground of refusal and asked the Board to ignore it.

**Held:** Appeal dismissed. From the evidence it is clear that the sponsor, although a very conscientious and hard working person cannot successfully care for her mother and five dependents. She herself requires the assistance of Ontario Housing and could not afford to supply accommodation for such an extended family. Her mother, limited by education and work experience, would face even more problems than her daughter in the work force and with greater family responsibilities.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum **Case heard:** in Toronto, November 1, 1979 **Judgment pronounced:** November 1, 1979 **Reasons by:** D. Davey (in English; 3 pp.), concurred in by A.B. Weselak and E. Teitelbaum **Docket no.:** 79-9248 **Counsel:** D. Taylor, Esq., for the respondent.

---

12.9 Jean-Baptiste Calixte v. Minister of Employment and Immigration

SPONSORSHIP - FALSE DECLARATION IN REGARD TO THE RELATIONSHIP OF ONE OF THE SPONSOREES - DEFINITION OF SON - ADOPTION - FOREIGN LAW - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS

EVIDENCE - PROOF OF FOREIGN LAW - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 9(3), 19(2)(d), 79, 95(j), (m) - IMMIGRATION REGULATIONS, 1978, SS. 4(c), 5(1), 6(1)(a)

The appellant filed an application to sponsor into Canada the admission of his father and his family which application was refused on the ground that the sponsoree made a false declaration relating to their relationship to one member included in the family to be sponsored. The sponsoree described as his son a male child who is not his legitimate son but is in fact his grand son, the son of one of his sons, the brother of the appellant, the sponsor. Also the sponsor described that same child as his brother but in fact he is really his nephew, therefore he can be punished pursuant to the Immigration Act in that he made too a false declaration. At the hearing, both the sponsor and his brother, the real father, freely admitted that the child was a natural son and this admission was not made under oath, but it is an admission against interest. On the record there was a Haitian birth certificate showing names of the grandparents as parents of the child.

**Held:** Appeal allowed on equitable grounds. Clearly the sponsoree, the grandfather, did not "answer truthfully" when he described the child as his son in his application for permanent residence and the refusal is in accordance with the law. The wording of the definition of "son" pursuant to section 2 of the Immigration Act, 1976, precludes any extended interpretation of "issue" to include lineal descendants. The child cannot be brought within this definition, he is not a person who may be included in the application for landing sponsored by a sponsor. He is not a dependant of the sponsoree within the meaning of this definition, but notwithstanding this he was included as a "dependant" - "son" in the application for landing made by his grand-father.

It must be emphasized that the child is not the subject of the sponsorship application, nor is he included in it. Similarly, the Notice of appeal makes no reference to him. This tribunal is not seized with the question of his admission. However, the rest of the family may be admitted.

The appellant and his brother, the real father of the child, were entirely honest in their statements at the hearing of the appeal. It appears that the sponsoree and his wife regard the child as their son and the misrepresentation as to his actual status, both in respect of his birth certificate and the application for permanent residence seem to be more "innocent" than fraudulent.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and E. Teitelbaum **Case heard:** in Montreal, September 25, 1979 **Judgment pronounced:** November 13, 1979 **Reasons by:** J.V. Scott (in English; 6 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket no.:** 79-1060 **Counsel:** R. St. Louis, Esq., for the respondent.

12.10 Janet Florita Pereira v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - CONVICTED OF SEVERAL CRIMINAL OFFENCES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), (i), (j), 18(1)(d), (1)(e)(ii), 19(1)(c), (i), 79

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused because he has been convicted of several criminal offences and as a result he was deported from Canada. He also does not have the consent of the Minister to come back. At the hearing, all the witnesses testified that the sponsoree, while he was in Canada, was immature and that his criminal record resulted from his association with bad company, and that since his departure from Canada he has matured and that he would not revert to a further life of crime were he be allowed to come into Canada.

**Held:** Appeal dismissed. Having considered the evidence as a whole, on the balance this case does not merit the granting of special relief on humanitarian and compassionate grounds.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:**  
in Toronto, November 13, 1979 **Judgment pronounced:** November 13, 1979 **Reasons by:**  
A.B. Weselak (in English; 6 pp.), concurred in by U. Benedetti and D. Davey **Docket**  
**no.:** 79-9069 **Counsel:** S. Ramkissoon, Esq., for the appellant; D. Taylor, Esq., for  
the respondent.

---

12.11 Schiller Cherilus v. Minister of Employment and Immigration

SPONSORSHIP - DOUBTS ON FULFILMENT OF UNDERTAKING - CREDIBILITY - IMMIGRATION ACT, 1976,  
S.C. 1976-77, C. 52. S. 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(iii)

The appellant filed an application to sponsor into Canada his parents and his two sisters which application was refused on the ground that he would not be able to financially support and care for them.

**Held:** Appeal dismissed. The appellant's income tax not been satisfactorily proved. Considering his anxiety at the hearing and his difficulty in communicating, perhaps due to the cultural difference, his testimony nevertheless appeared to suffer from lack of credibility and of coherence.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in  
Montreal, November 9, 1979 **Judgment pronounced:** November 14, 1979 **Reasons by:**  
J.-P. Houle (in French; 7 pp.), concurred in by R. Tremblay and G. Loiselle **Docket**  
**no.:** 79-1021 **Counsel:** G. Sciortino, Barrister and Solicitor, for the appellant;  
M.A. Kulba, Esq., for the respondent.

---

12.12 Gabriel Oscar Farias Astorga v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 52, S. 70(2)

The applicant, a citizen of Chile, is claiming refugee status on the ground that because he was an active member of the Socialist Party and working for the Government in a financial function, he was, after the coup, arrested several times, detained, tortured and threatened with death. There were about ten arrests from September 1973 to February 1978. He claims that the authorities who arrested him thought that, because he was working for the finance department, he could find money to buy arms. He states that under the Allende's government he was the head of the financial section where he worked, and after the coup, he was relegated to the lowest job in the office, he was subject of constant surveillance by the police and the military. He was almost forced to resign from his job and then decided to set up a small "commerce" selling biscuits. It lasted two or three months when he was again arrested by the Superior Chief of the militaries and he was tortured and threatened on the ground that the military government thought he was again doing politics. He left Chile with the help of a clandestine organization. His brother who is now in Canada has been recognized refugee by the Minister testified at the hearing.

**Held:** Application being allowed to proceed, the applicant is determined to be a Convention refugee; he was a credible witness. He was not seriously shaken on cross-examination, his sworn evidence was uncontested and was to some extent supported by the evidence of his brother.

**Coram:** J.V. Scott (Chairman), G. Loiselle and E. Teitelbaum **Case heard:** in  
Montreal, July 19, 1979 **Judgment pronounced:** July 23, 1979 **Reasons by:** J.V.  
Scott (in English; 7 pp.), concurred in by G. Loiselle and E. Teitelbaum **Docket no.:**  
79-1035 **Counsel:** F. Philibert, Barrister and Solicitor, for the applicant; M.A.  
Kulba, Esq., for the respondent.

---

12.13      Agnieszka Wieckowska v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - "SELF INDUCED" REFUGEE, REFUGEE  
"SUR PLACE" - EVIDENCE

EVIDENCE - REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - "SELF INDUCED"  
REFUGEE "SUR PLACE" - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant is basing her claim to refugee status on her membership in a Social group and political opinion. She alleges that the fact that she has been out of Poland for over three years, and that on her third visit to the Polish Consulate in Montreal a further extension of her passport was refused, would expose her to severe repercussion if she were required to return to Poland. She further alleges that her lengthy stay in Canada and her application for refugee status would be regarded as "hostile propaganda" against the government of Poland and she would probably go to jail. She also claims that she will be socially ostracized in Poland, due to her long absence from the country, and this ostracism would affect her chances of employment and of marriage. She testified at her examination under oath that her political views had changed since her stay in Canada. Her counsel alleges that because her political opinion have changed she has become a self induced refugee.

**Held:** Application being allowed to proceed, the applicant is determined not to be a Convention refugee. It is certainly possible to become a refugee "sur place" either as the applicant's counsel described it "self induced" or by reason of changes in the home country, but there is no proof that such is the case in the instant application. The applicant's political views may well have changed during her stay in Canada, but she has made no public parade of them, nor was there any proof that they would be adversely viewed by the Polish authorities. Her fear of returning may be genuine but there is no direct or even indirect evidence to establish that it is "well-founded" - an essential element of the definition of Convention refugee. No evidence was adduced as to the law of Poland respecting persons remaining outside the country after the expiry of their passport, and indeed when the Polish Consulate in Montreal refused to give a further extension of the applicant's passport, that passport was still valid, and she could have returned.

**Coram:** J.V. Scott (Chairman), E. Teitelbaum and G. Loiselle      **Case heard:** in  
Montreal, July 18, 1979      **Judgment pronounced:** July 23, 1979      **Reasons by:**  
J.V. Scott (in English; 5 pp.), concurred in by E. Teitelbaum and G. Loiselle      **Docket**  
**no.:** 79-1045      **Counsel:** J.H. Grey, Barrister and Solicitor, for the applicant; M.A.  
Kulba, Esq., for the respondent.

12.14      Nelson Del Carmen Atherton Monsalves v.  
             Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71 - IMMIGRATION ACT, R.S.C. 1970, C. 1-2, S. 7(1)(c) - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that he was a member of the Socialist Party while at school, but his activity appears to have been minimal. Before arriving in Canada, he was in Italy for nine months and he was in Canada for seven months before he claimed refugee status.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. While in Chile, he was never arrested or detained for any political reason whatsoever and the only evidence that the authorities in Chile are seeking him for political reasons is the letter which is referred to in his declaration under oath. This letter is somewhat suspect as it was written after deportation proceedings had been commenced against him. The fact which seems to have motivated the applicant to leave Chile was that he had been drafted for military service in the Chilean Army and he did not wish to serve in this army as he stated in the course of his examination that he was something similar to a conscientious objector.

Coram: A.B. Weselak (Vice-Chairman), C.M. Campbell and U. Benedetti  
in Toronto, September 6, 1979 Judgment pronounced: September 6, 1979  
A.B. Weselak (in English; 2 pp.), concurred in by C.M. Campbell and U. Benedetti  
Docket no.: 79-3015

---

12.15 Maria Teresa Monreal Sepulveda v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION FOR POLITICAL OPINIONS - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 52, SS. 70(1), (2), 71(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that she was, after the referendum, arrested, detained for three days and questioned on her political opinions. She was threatened with the fact that she would not be able to enter at the University to study. She was not maltreated physically during this detention and she was not arrested again.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The arrests and detentions of her relations took place subsequent to the coup of September 1973 in which she was never involved since she was only 14 years old then. Her sole evidence as to her arrest and detention is related to the January 1978 referendum because she voted "no". She admits the authorities let her go after her arrest and inquiry because they could not find any reasons to charge her.

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski and G. Loiselle  
in Montreal, September 10, 1979 Judgment pronounced: September 10, 1979  
by: G. Loiselle (in English; 5 pp.), concurred in by J.-P. Houle and F. Glogowski  
Docket no.: 79-6149

---

12.16 Georges Awad v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - NO HARASSMENT OR PERSECUTION - IN POSSESSION OF A VALID TRAVEL DOCUMENT

The applicant is claiming refugee status and his real purpose in claiming this status is that he wants to become a landed immigrant. As he stated he has never been harassed or persecuted by the Government or the Police of Lebanon. He had a valid travel document issued by his country when he entered in Canada and had no problem in having his passport renewed.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. His sole ambition during the three years he was in Canada was to be granted "landed immigrant status" and his claim to the Convention refugee status was his decision when he was told he would have to go back to his country.

Coram: J.V. Scott (Chairman), J.-P. Houle and G. Loiselle  
October 25, 1979 Judgment pronounced: October 25, 1979  
(in English; 3 pp.), concurred in by J.V. Scott and J.-P. Houle  
Case heard: in Montreal, Reasons by: G. Loiselle  
Docket no.: 79-3032.

---

12.17 Ikram Ul Haque v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - MARRIAGE OF CONVENIENCE - CREDIBILITY

EVIDENCE - UNSWORN STATEMENT - BURDEN OF PROOF - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), (2)

The appellant entered Canada as a visitor, was ordered deported for remaining beyond the prescribed period and was physically deported. He married a Canadian citizen in Winnipeg, a week following the issuance of the deportation order. She filed an application to sponsor him and he re-entered Canada as a landed immigrant with the consent of the Minister. Shortly after his re-entry, the Canadian girl to whom he got married to signed a statement witnessed by an Immigration officer to the effect that she married him under another name and that she was paid to do so. She was only sixteen years old at the time and she had used the identity card of another girl. This document resulted in this instant deportation order.

**Held:** Appeal dismissed. The appellant is not credible and from his own testimony he never had an honest marriage relationship with his wife and further there is no reason to believe he intended or expected to live with her on his return to Canada. In this instant case the Immigration officers were deliberately misled into believing the sponsorship was taken to reunite this couple and that this was not the objective.

F. Glogowski (dissenting)

I would allow the appeal on legal grounds. From the minutes of the Inquiry, it appears that the only piece of evidence on which the order of deportation is based is a statement from the Canadian girl who got married to the sponsoree. This statement is not made in the form of an Affidavit or a Statutory Declaration. This statement does not prove whether that girl at the marriage ceremony as the authoress of this statement was at that time the possessor of both Certificates of Birth. The Special Inquiry Officer failed to obtain the proper evidence to support the allegation made against the appellant under section 18(1)(e)(viii) of the Immigration Act, 1952.

Dilday v. M.M.I. 2 I.A.C. 340; Brooks v. M.M.I. 1 I.A.C. 33.

**Coram:** C.M. Campbell (Vice-Chairman), D. Petrie and F. Glogowski (Dissenting) **Case heard:** in Winnipeg, June 13, 1978 **Judgment pronounced:** August 21, 1978 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by D. Petrie **Dissenting reasons by:** F. Glogowski (1 p.) **Docket no.:** 78-6081 **Counsel:** J.L. Gunn, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

12.18 Noorollah Ostadi v. Minister of Employment and Immigration

REMOVAL ORDER - IN POSSESSION OF A NON-IMMIGRANT VISA - ORDERED EXCLUDED BECAUSE FOUND NOT TO BE A GENUINE VISITOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(h), 20(1), 32(5)(b), 72(2)(b), (d)

The appellant, a citizen of Iran, arrived in Canada seeking entry as a visitor and in possession of a valid visitor's visa. He was ordered excluded on the ground that he was not a genuine visitor. The evidence before the Immigration officer and the adjudicator consisted in that he had applied for permanent residence in Canada two years ago and he was rejected, he had completed an application for a temporary visa to the United States, he was in possession of all his school documents, he arrived in Canada in possession of all his school documents, he arrived in Canada in possession of a one-way ticket, he upon his arrival, was in possession of \$13,000.00 in cash funds, there was a contradiction at the inquiry in that he stated that he had not seen his sister for three years but she testified at the inquiry that she had seen him last summer, when asked if he had the intention to return to Iran, he answered yes but only when the situation will be better. Also at the hearing, he stated that he was a member of the Baha'is in Iran and being a religious minority they were in danger in Iran and were treated badly by the Moslems.

**Held:** Appeal dismissed. There was sufficient evidence to support the adjudicator's decision. Further, the appellant has lived practically all his life in Iran. He has received a substantial education and has been profitably employed while in Iran. While the evidence would indicate that the adherents of the Baha'is have been sporadically persecuted in Iran, there is no evidence to the effect that he has in any way suffered any persecution. His mother and sister are in Iran, as well as his wife, and his only relative in Canada is an elder sister.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, July 19, 1979 **Judgment pronounced:** July 19, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9001 **Counsel:** D.B. Johnson, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

12.19 Alfred Butler v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF A CRIMINAL OFFENCE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(i), 72 - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, S. 5 - CRIMINAL CODE, R.S.C. 1970, C. C-34, S. 423(1)(d)

The appellant, a landed immigrant, has been ordered deported on the ground that he had committed a criminal offence in that he was found in possession of 110 pounds of hashish. The appellant and his wife were both originally charged with importing narcotics. His wife pleaded guilty to a lesser charge and received a sentence of two years less a day. He was convicted on the two counts of conspiracy to import and was sentenced on Count 1 to seven years imprisonment and on Count 2 to ten years imprisonment, to run concurrently.

**Held:** Appeal allowed on equitable grounds, execution of the deportation order is stayed for two years following release on parole from present incarceration to give the appellant an opportunity to demonstrate that his rehabilitation is genuine. His wife would not be allowed to accompany him to the United States because she was convicted of an indictable offence. The relationship between him, his wife and her family appears to be an intense one, there is an apparent determination to rehabilitate themselves.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and U. Benedetti **Case heard:** in Toronto, September 10, 1979 **Judgment pronounced:** September 11, 1979 **Reasons by:** E. Teitelbaum (in English; 3 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 79-9164 **Counsel:** P.D. Copeland, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

12.20 Minister of Employment and Immigration v. Jennifer La Rose

MOTION BY MINISTER - JURISDICTION OF BOARD - RESPONDENT IS NOT IN POSSESSION OF A VALID VISA - RIGHT OF APPEAL

JURISDICTION OF BOARD - MOTION BY MINISTER - RESPONDENT NOT IN POSSESSION OF A VALID VISA - RIGHT OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 19(1)(h), 20(1), 72

The Minister filed a motion contesting the jurisdiction of the Board to entertain the appeal on the ground that the respondent was not in possession of the visa described in section 72 of the Act. The respondent arrived in Canada seeking entry as a visitor, and upon her arrival she was examined and the Immigration officer concluded that she was not a genuine visitor and ordered her excluded. The adjudicator conducting the inquiry was of the opinion that the stamp appearing on her passport was a valid visa which entitled the respondent to have her appeal entertained by the Board.

Held: Motion allowed, and appeal of the respondent dismissed for lack of jurisdiction. While the stamp in the passport complies with the strict interpretation of the definition of the word "visa", this definition must be interpreted with a consideration of its use in section 72 of the Immigration Act, 1976 and as a result of this interpretation, the stamp inserted in the passport is not a valid visa. The visa referred to in section 72 of the Act is either a non-immigrant visa authorizing entry into Canada, or an immigrant visa authorizing admission as a permanent resident to Canada.

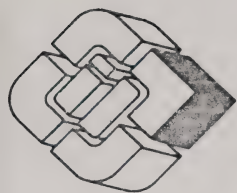
Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard:  
in Toronto, November 19, 1979 Judgment pronounced: November 28, 1979 Reasons by:  
A.B. Weselak, (in English; 3 pp.), concurred in by U. Benedetti and D. Davey Docket  
no.: 79-9284 Counsel: M. Prue, Esq., for the applicant; R.N. Sharma, Barrister and  
Solicitor, for the respondent.

---

ISSN 0225-1620

LAG





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 13

Date March 27, 1980

AI  
I 81  
I 52

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté



Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

#### SPONSORSHIPS

13.1	78-9196	Taylor, Gloria Angelica v. Minister of Employment and Immigration
13.2	79-9052	Gill, Nirmal Singh v. Minister of Employment and Immigration
13.3	77-6046	Bhatti, Karnail Kaur v. Minister of Employment and Immigration
13.4	79-6025	Zimerman, Filip v. Minister of Employment and Immigration

#### REFUGEES

13.5	79-9104	Tobar, Martin Alejandro Quezada v. Minister of Employment and Immigration
13.6	79-6125	Sleiman, Mohammed Said
13.7	79-9291	Cortes, Juan Carlos Saldias v. Minister of Employment and Immigration
13.8	79-6166	Diaz, Limbania Fidela
13.9	79-1040	Sandoval Gonzalez, Boris Augustin v. Minister of Employment and Immigration
13.10	79-1086	Stack-Hernandez, Ines Carlina de Acosta v. Minister of Employment and Immigration
13.11	79-9358	Munoz, Carlos Antonio (Munizaga) v. Minister of Employment and Immigration
13.12	79-6223	Marquez-Cabrolhier, Juan Carlos
13.13	79-9105	Al-Khalifa, Kadir Karim Ali v. Minister of Employment and Immigration
13.14	79-9315	Malham, Yousif Younathan v. Minister of Employment and Immigration
13.15	79-1197	Ahmad, Owais Uddin v. Minister of Employment and Immigration

#### REMOVAL ORDERS

13.16	79-1020	Rivas Valderruten, Efren v. Minister of Employment and Immigration
13.17	79-1127	Fabrian, Ghislain v. Minister of Employment and Immigration
13.18	79-1065	Heneen, Fouad Kamel v. Minister of Employment and Immigration
13.19	78-9143	Hogan, Timothy Paul v. Minister of Employment and Immigration

#### MOTION

13.20	79-6137	Minister of Employment and Immigration v. Chana, Rana
-------	---------	---

#### EVIDENCE

13.2	79-9052	Gill, Nirmal Singh v. Minister of Employment and Immigration
13.3	77-6046	Bhatti, Karnail Kaur v. Minister of Employment and Immigration
13.9	79-1040	Sandoval Gonzalez, Boris Augustin v. Minister of Employment and Immigration
13.13	79-9105	Al-Khalifa, Kadir Karim Ali v. Minister of Employment and Immigration

13.1 Gloria Angelica Taylor v. Minister of Employment and Immigration

SPONSORSHIP - DOUBTS ON FULFILMENT OF UNDERTAKING - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 3(a)(ii), 6(1)(b)(i), (iii)

The appellant filed an application to sponsor into Canada the admission of her son which application was refused on the ground that she was not able to fulfil the undertaking to provide for lodging, care and maintenance.

**Held:** Appeal allowed on legal grounds. The sponsoree is unmarried, under the age of twenty-one years, and has no issue and it would appear that the undertaking provided for in section 6 of the Immigration Regulations, 1978 are not applicable in this case and are not a prohibition to his admission to Canada.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, June 7, 1979 **Judgment pronounced:** June 7, 1979 **Reasons by:** A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 78-9196 **Counsel:** D.M. Greenbaum, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

13.2 Nirmal Singh Gill v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREE - EVIDENCE - VERIFICATION OF DOCUMENTS - AUTHENTICITY - TRANSITIONAL

EVIDENCE - VERIFICATION OF DOCUMENTS - AUTHENTICITY - SPONSORSHIP - AGE OF SPONSOREE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(t) - IMMIGRATION REGULATIONS, PART I, SS. 31(1)(d), 36 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17

The appellant filed an application to sponsor into Canada the admission of his parents, his two sisters and his brother. The application was refused in respect of the father because he had not established satisfactory evidence that he was over 60 years of age. A number of documents were produced as evidence of age and an Order of the Board was to the effect of adjourning the appeal pending verification of documents.

**Held:** Appeal allowed on legal grounds. The Board is not satisfied that the respondent fulfilled his promise given at the previous hearing to verify the document in question. The memorandum addressed to Manager of the Immigration Appeals Office is not a verification required by the Board. It is just the opinion of the Immigration officer in respect of the document in question. It is apparent that the counsellor in New Delhi ignored the Board's request for verification of the documents. Accordingly, the Board has no alternative but to agree with the appellant's counsel that the records of the 1971 Voters List is a credible document corroborating that the sponsoree was over 60 years old when his son made an application for his admission to Canada. Considering the evidence and the submissions, the preponderance of evidence should benefit the appellant.

Dulla, Tarlochan Singh v. M.E.I. (I.A.B. 78-6040), Glogowski, Campbell, Tremblay, October 10, 1979 (not yet reported); M.E.I. v. Lyle, William Claude (F.C.A., no. A-651-78), Pratte, Heald, Le Dain, June 13, 1979 (not yet reported).

**Coram:** F. Glogowski, D. Davey and E. Teitelbaum **Case heard:** in Toronto, August 9, 1979 **Judgment pronounced:** January 2, 1980 **Reasons by:** F. Glogowski (in English; 12 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:** 79-9052 **Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

13.3 Karnail Kaur Bhatti v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREES - EVIDENCE - AUTHENTICITY OF DOCUMENTS

EVIDENCE - AUTHENTICITY OF DOCUMENTS - SPONSORSHIP - AGE OF SPONSOREES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor into Canada the admission of her parents, and her four brothers. The application was refused in respect of the two older brothers on the ground that they had not established that they were under 21 years of age. Both the sponsorship application and the individual applications show these boys to be twins. School records show the birth date to be different. Their birth dates were not recorded at the registry, only a copy of a page from the book of the village showed them to have been born the same date. Because the entry was not in a chronological order the authenticity of that latter document was questioned. At the hearing, their passports were produced, and they showed their birth dates to be the same.

**Held:** Appeal dismissed. It has not been established that the boys were twins, according to the photographs, it was the opinion of each member that one appeared to be older than the other. This is consistent with their ages as they appear on the school records. It follows that the appellant has not established to the satisfaction of the Board that they were members of the family class. This being so it is without authority to consider special relief.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:** in Vancouver, October 22, 1979 **Judgment pronounced:** October 31, 1979 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by U. Benedetti and R. Tremblay **Docket no.:** 77-6046 **Counsel:** R.G. Heath, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

Reasons from the Bench  
Summary by the editor

13.4 Filip Zimmerman v. Minister of Employment and Immigration

SPONSORSHIP - MEDICAL REPORT NOT SIGNED BY THE SECOND MEDICAL OFFICER - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), 79

**Held:** It is clear from the file that on the medical report the name of the second medical officer, whose signature is required by section 19(1)(a) of the Immigration Act, 1976, is typed but no signature of that doctor appears.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum **Case heard:** in Winnipeg, December 6, 1979 **Judgment pronounced:** December 6, 1979 **Reasons from the Bench by:** C.M. Campbell (in English; 2 pp.), concurred in by F. Glogowski and E. Teitelbaum **Docket no.:** 79-6025 **Counsel:** R.M. Leipsic, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

13.5 Martin Alejandro Quezada Tobar v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45(5), 70, 71

The applicant, a citizen of Chile; is claiming refugee status on the ground that he was a member of the Socialist Party in 1970 or 1971. He states that in October 1973 he was arrested by the Military and accused of trafficking in the black market and of running a guerrilla training school. Apparently during this time he was badly beaten and tortured with electric currents and interrogated about his political activities. He was arrested a second time in February 1978 and was detained in a house by armed men in civilian clothing and was told that he would be killed if he kept on publicizing his brother's detention.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. It appears from the record that the applicant's involvement in Socialist Party was simply that of a member. If the DINA was interested in arresting the applicant it is difficult to understand that from February 1978 to when he left Chile he was never arrested although he was running his own electrical and welding business, had to present himself to the Registry Office to receive a passport and obtained an exit visa from the police at the airport.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and C. Campbell **Case heard:** in Toronto, June 6, 1979 **Judgment pronounced:** June 6, 1979 **Reasons by:** U. Benedetti (in English; 13 pp.), concurred in by A.B. Weselak and C. Campbell **Docket no.:** 79-9104.

---

13.6

Mohammed Said Sleiman

REFUGEE - REDETERMINATION - APPLICANT BORN IN A PALESTINE REFUGEE CAMP WHICH IS UNDER THE PROTECTION OF THE UNITED NATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(1) - UNITED NATIONS CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, ART. 1D

The applicant, a citizen of Lebanon, born in a Palestine refugee camp is claiming refugee status. He said that he came in Canada for the purpose of continuing his education and obtaining a university degree.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. He was born in a refugee camp which is under the protection of the United Nations and pursuant to article 1D of the United Nations Convention he is not a refugee. He entered Canada temporarily on a valid Lebanese travel document as a student and his student activities have been concluded. He is now in a position to return to his home and the protection of the United Nations.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and R. Tremblay **Case heard:** in Vancouver, July 17, 1979 **Judgment pronounced:** July 17, 1979 **Reasons by:** C.M. Campbell (in English; 2 pp.), concurred in by F. Glogowski and R. Tremblay **Docket no.:** 79-6125.

---

13.7 Juan Carlos Saldias Cortes v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70 - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant, a citizen of Chile, filed a claim to refugee status on the ground that as a student he was a sympathizer of the Socialist Party. After the coup of September 11, 1973, he had no political activities but in February 1978, he was arrested and detained for fifteen days, maltreated and threatened.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. He was arrested only because he threw a chair at the military when his mother-in-law and his wife had an altercation with the military. He did not belong to the Socialist Party and had no political activities since 1973. He was never interrogated or arrested for a period of more than 4 years and the authorities never showed any interest in him before or after his arrest. He was never asked to report after his release and had no difficulty in obtaining his passport.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and J.-P. Houle **Case heard:** in Toronto, September 19, 1979 **Judgment pronounced:** September 19, 1979 **Reasons by:** U. Benedetti (in English; 3 pp.), concurred in by A.B. Weselak and J.-P. Houle **Docket no.:** 79-9291.

---

13.8

Limbania Fidela Diaz

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(1)

The applicant, a citizen of Chile, filed a claim to refugee status on the ground that she fears persecution because of her political opinion. She states that her brother is an active member of the Resistance Movement and so she was counted with him. In the spring of 1978, she harboured two members of the Resistance in her home and contributed \$1,500 to be used in their activities. Apparently they were using her house as a meeting place but she was never present and took no part.

**Held:** Application refused to proceed and the applicant is determined not be a Convention refugee. Much of the applicant's evidence is speculative and none of it supports the Convention requirement of a well-founded fear of persecution for reasons of political opinion which is the basis of her claim.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and A.B. Weselak **Case heard:** in Vancouver, September 19, 1979 **Judgment pronounced:** September 19, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by U. Benedetti and A.B. Weselak **Docket no.:** 79-6166

---

13.9 Boris Augustin Sandoval Gonzalez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - EVIDENCE - CREDIBILITY - "WELL-FOUNDED FEARS"

EVIDENCE - CREDIBILITY - "WELL-FOUNDED FEARS" - REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45, 70

The applicant, a citizen of Chile, is claiming refugee status on the ground that he was a member of a political party "La Gauche Chrétienne" Party which was favourable to the Allende Government, and that he was a volunteer in the activities of J.A.P., "Junte d'approvisionnement populaire" which was subsequently supported by the Allende Government. He had no trouble with the new regime until 1974 when he was arrested, detained and threatened. Being arrested, he lost his job. From 1974 to the time of his departure from Chile, he worked at occupations that did not require identity. He decided to leave Chile when two of his friends with whom he has engaged in clandestine propaganda activities were arrested.

**Held:** Application being allowed to proceed, the applicant is determined to be a Convention refugee. On the evidence it might be concluded that the applicant was exaggerating his fears - in some respects he was not altogether a credible witness; there are discrepancies and some evasive answers in his testimony. However, the testimony of his wife leads to the conclusion that his fears may have been well-founded. She testified that after her husband left, several times members of the military came to her house, questioned her as to the whereabouts of her husband and conducted a thorough and destructive search of the premises.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and E. Teitelbaum **Case heard:** in Montreal, September 24, 1979 **Judgment pronounced:** September 25, 1979 **Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket no.:** 79-1040 **Counsel:** P. Duquette, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

13.10

Ines Carlina de Acosta Stack-Hernandez v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - HUSBAND, MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 45, 70

The applicant, a citizen of Chile, is claiming refugee status on the ground that at the time the referendum was held in 1978, she was maltreated, threatened, beaten and had to go to the hospital to be treated. After her husband left Chile, the Chile authorities continued to look for him in searching their house and in questioning her. On several occasions she was visited by the police, the DINA, and often was maltreated. Originally this application for redetermination of the refugee claim was made by the husband and her application was deriving from it. At the time of the hearing the husband had disappeared. However, the Board in examining the case, looked at the husband's file as part of the record even though it was no longer seized of his case.

**Held:** Application being allowed to proceed and the applicant is determined to be a Convention refugee. Although, she testified that she herself was not involved in politics, her husband was; his activities in Chile after the coup brought him to the notice and suspicion of the authorities, and not only he, but also his wife suffered the consequences. The Board is not seized with any matter pertaining to the husband. However, considering the peculiar conduct of the Immigration Commission in respect of him, and the situation of his wife in Canada (she is ill and destitute, living on the charity of three Montreal churches) it is suggested that any application for landing in Canada made by the husband be processed as soon as possible.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and G. Loiselle **Case heard:** in Montreal, October 22, 1979 **Judgment pronounced:** October 23, 1979 **Reasons by:** J.V. Scott (in English; 10 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1086 **Counsel:** R. Picard, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

13.11 Carlos Antonio Munoz (Munizaga) v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - OBTAINING NATIONAL PASSPORT OUTSIDE COUNTRY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71 - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, ART. 1A(2), 1C(1)

The applicant, a citizen of Chile, is claiming refugee status on the ground that he was a sympathizer of the Socialist Youth in Chile, then he joined the Student Revolutionary Front Party. As a result of this membership he was, several times, arrested, detained, tortured and beaten. From Chile he went to Bolivia, to Brazil, to French Guyana, to Surinam where he claimed he was a Chilean exile and was given a visa for three months. It was not possible to renew his visa so he decided to go in Panama with intention to ask for political asylum. He did not stop in Panama and finally he arrived in Nanaimo, British Columbia. He lived in Canada for about two years, he did not seek asylum because he was afraid to declare himself to the Canadian authorities. He went to Sweden to seek political asylum and was deported to Canada after nine days. To go to Sweden the applicant applied for and obtained a Chilean passport from the Chilean Consulate in Vancouver.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. His conduct since he came to Canada is not that of a genuine refugee - a person with a well-founded fear of persecution. His total failure to claim refugee status in this country until after he came to the notice of the Canadian Immigration authorities and his application for a Chilean passport in Vancouver casts such doubt on his story of what happened to him in Chile as to render his evidence on the point worthless. It is clear that he was well aware that he could apply for determination of refugee status in Canada; his explanation as to why he did not do so is not credible. The applicant has failed to make a prima facie case: he is an illegal immigration to Canada not a refugee.

One aspect of a passport may be the case of a person who is fleeing his country because of a well-founded fear of persecution and contrives to obtain that document solely for the purpose of identification and confirmation of nationality.

However, the fact that in the instant case, he applied and obtained a Chilean passport is suggesting that he was availing himself of the protection of his country, thus removing himself from the ambit of the definition of Refugee in section 2 of the Act, assuming that he had ever come within it, and bringing himself squarely within the purview of Article 1C(1) of the Convention. He was benefiting from his national status by applying for obtaining and using a document entitling him to the protection of his own country in his travels abroad. He has therefore lost any refugee status he may have had.

Villarroel, Alfredo Nelson Salvatierra v. M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, March 23, 1979 (See CLIC, No. 25.12, April 4, 1979); Maldonado, Pedro Enrique Juarez v. M.E.I. (F.C.A., no. A-458-79), Heald, Ryan, MacKay, November 19, 1979 (not yet reported); Joyce v. Director of Public Prosecutions [1946] A.C. 347.

**Coram:** J.V. Scott (Chairman), F. Glogowski and E. Teitelbaum **Case heard:** in Toronto, November 1, 1979 **Judgment pronounced:** November 1, 1979 **Reasons by:** J.V. Scott (in English; 15 pp.), concurred in by F. Glogowski and E. Teitelbaum **Docket no.:** 79-9358.

---

13.12

Juan Carlos Marquez-Cabrolier

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Chile, filed a claim to refugee status on the ground that at the time of the coup in 1973, all the students at his college were arrested and questioned and that he was detained for two days. There is no evidence he had any further problems with the government.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. During the four years following the coup until he arrived in Canada, the applicant reports no difficulty whatever with the Chilean authorities. Further, there has never been persecution of other members of his family.

**Coram:** C.M. Campbell (Vice-Chairman), J.-P. Houle and R. Tremblay **Case heard:** in Vancouver, November 13, 1979 **Judgment pronounced:** November 13, 1979 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-6223.

---

13.13

Kadir Karim Ali Al-Khalifa v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - EVIDENCE - SUBMISSIONS CONTAINED IN A PROFESSOR'S LETTER

EVIDENCE - SUBMISSIONS CONTAINED IN A PROFESSOR'S LETTER - REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70(1), 71

The applicant, a citizen of Iraq, is claiming refugee status on the ground that he is a member of a social group; he is a member of a Turkish minority in Iraq. He came from a Kurdistan area in Iraq, he was deprived of his property and removed with other people from Kurdistan to the Southern area of Iraq and he escaped from Iraq and fears that if he were to return he would be immediately arrested. As part of the record a letter of a professor of law described the situation in Iraq. This application for redetermination of a refugee claim was first examined by the Board and has been refused to proceed. The applicant made an appeal to the Federal Court of Appeal and this latter Court referred the matter back to the Board for reconsideration on the basis that the Board erred in holding that the letter written by the professor does not display any particular knowledge of the applicant's situation.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The professor does not seem to be aware of the other facts as outlined in the Board's reasons for judgment and the examination under oath to the effect that the applicant received favourable treatment while he was in Iraq in that he was granted a scholarship to attend the University of Odessa in the U.S.S.R. where he received a Master's degree in engineering. It also appears that he was not aware of the fact that from 1972 the applicant was employed by a Government agency and from 1974 to 1976 by a Maritime Company and that the applicant was generally economically well off. The professor does not seem to be aware of the fact that the applicant was one of roughly 150,000 persons who were displaced from their land and moved from Kurdistan and that he was treated no worse than any of these other 150,000 people. He was never arrested or detained by the authorities while in Iraq. In the Board's written reasons, it is obvious that they did consider the submissions contained in the professor's letter and took them into consideration in making their decision.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and J.-P. Houle **Case heard:** in Toronto, November 15, 1979 **Judgment pronounced:** November 15, 1979 **Reasons by:** A.B. Weselak (in English; 5 pp.), concurred in by U. Benedetti and J.-P. Houle **Docket no.:** 79-9105.

---

13.14 Yousif Younathan Malham v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION BY REASON OF RACE, RELIGION AND MEMBERSHIP OF A SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, S. 52, S. 70

The applicant, a citizen of Iraq, is claiming refugee status on the ground that he fears persecution as both a Christian and an Assyrian and also by reason of the fact that the government in Iraq is Arabian. He claims that as a Christian he would have great difficulty in obtaining employment in Iraq, particularly with the government because of the fact that he is an Assyrian. He states that when he spent two years in the army he was discriminated due to his racial origin and nationality. As to his claim of persecution because of his membership in a social group, described as a sports and social association he states that the government attempted to undermine the association by attempting to change the name into an Arab name and by infiltrating the club with members from the Intelligence Service.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant, upon his arrival in Canada, did not immediately claim refugee status but waited until he was subject to deportation to do so. He was never arrested or detained in Iraq. He may have been discriminated against in Iraq by reason of race, religion and membership in a social group but there is no indication that he was persecuted physically or otherwise, by reason of these facts.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and R. Tremblay Case heard: in Toronto, November 15, 1979 Judgment pronounced: November 15, 1979 Reasons by: A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and R. Tremblay Docket no.: 79-9315.

---

13.15 Owais Uddin Ahmad v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION AS A MEMBER OF A MINORITY GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70(1), 71

The applicant, a citizen of Pakistan, filed a claim to refugee status on the ground that because he is a member of a minority which language is Urdu, he was persecuted by the majority, which language is Punjabi and that, furthermore, he could not find a job with the government. Also a part of his declaration is based on the fact that he is prohibited from taking drugs against malaria, which is a high risk disease in Pakistan.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. The fact that the applicant cannot obtain employment with the government because of his nationality is doubtful, he said that he applied many times when he was 19 years old, but he was refused. He probably did not have the qualifications required. The fact that he cannot take drugs against malaria is not covered by the Geneva Convention and cannot be taken into account by the Board.

Coram: J.V. Scott (Chairman), J.-P. Houle and R. Tremblay Case heard: in Montreal, November 21, 1979 Judgment pronounced: November 21, 1979 Reasons by: R. Tremblay (in English); 4 pp.), concurred in by J.V. Scott and J.-P. Houle Docket no.: 79-1197.

---

13.16 Efren Rivas Valderruten v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - POLYGAMOUS MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 32(2)

The appellant, a permanent resident, has been ordered deported on the ground that he was admitted into Canada by reason of a misrepresentation of a material fact in that he did not disclose that he was already married and that marriage had not been dissolved.

Held: Appeal dismissed. The appellant deliberately omitted to declare to the visa agent his real marital status. The misrepresentation pertaining to the marital status is material to the admission into Canada of the appellant. There are no sufficient grounds to grant special relief. Even if the appellant is presently married to a Canadian citizen with whom he has a child, this Canadian wife is now asking the divorce on the ground that he was already married in his country of origin; the appellant not only has a child in Canada but also he has at least one child in his country.

Headlam v. M.M.I. 11 I.A.C. 141/149; Khan, Safdar Abdullah v. M.M.I. (I.A.B. 76-9350), Weselak, Benedetti, Petrie, March 9, 1977 (not yet reported); Ebanks, Barbara Elinora v. M.M.I. (F.C.A., no. A-559-76), Jackett, Urie, MacKay, January 11, 1977 (not yet reported); Hilario, Mario Santiago v. M.M.I. (F.C.A., no. A-84-77), Heald, Urie, MacKay, September 27, 1977 (not yet reported).

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, September 11, 1979 Judgment pronounced: September 11, 1979 Reasons by: J.-P. Houle (in French; 5 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 79-1020 Counsel: R. Deguire, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

13.17 Ghislain Fabrion v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF A CRIMINAL OFFENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(i), 72(1)(b) - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, SS. 4(2), 5(2)

The appellant, a permanent resident has been ordered deported on the ground that he was convicted of possession of hashish for the purpose of trafficking. At the time of the hearing, the appellant was serving his sentence of five years in the penitentiary. Two of his ex-employers testified on his behalf at the hearing, and one of them produced a statutory declaration offering him a permanent employment on his release from prison.

**Held:** Appeal dismissed. The appellant was convicted of a serious crime, and notwithstanding the appellant's lengthy stay in this country he has no real roots here, he has no savings, no family except an aunt and uncle from whom he is completely estranged, his immediate family is in Belgium and there is no reason why he cannot join them there.

**Coram:** J.V. Scott (Chairman), J.-P. Houle, G. Loiselle **Case heard:** in Montreal, October 22, 1979 **Judgment pronounced:** October 24, 1979 **Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1127 **Counsel:** G. Hargreaves, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

13.18 Fouad Kamel Heneen v. Minister of Employment and Immigration

REMOVAL ORDER - IN POSSESSION OF A VALID VISA - NOT A GENUINE VISITOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(h), 20(1), 32(5)(b), 72(2)(b)

The appellant arrived in Canada in possession of a passport containing a Canadian visitor's visa for a sojourn of one week. He became the subject of a report which resulted in an exclusion order. He testified at the hearing.

**Held:** Appeal dismissed; the exclusion order is clearly supported by the evidence. The appellant testified that although he had no intention of remaining in Canada when he first came here - a statement which is not believed by the Board and which the learned adjudicator did not believe - he now wishes to immigrate to Canada and will return home in order to apply for permanent residence status in this country.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and G. Loiselle **Case heard:** in Montreal, October 24, 1979 **Judgment pronounced:** October 24, 1979 **Reasons by:** J.V. Scott (in English; 2 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1065 **Counsel:** J.R. St-Louis, Esq., for the respondent.

---

13.19 Timothy Paul Hogan v. Minister of Employment and Immigration

REMOVAL ORDER - CONVICTED OF A CRIMINAL OFFENCE - TRAFFICKING IN HEROIN - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 72 - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, SS. 4(1), (3)

The appellant, a permanent resident, was ordered deported because he had been convicted twice for trafficking in heroin for which he was sentenced consecutively to five years in prison.

Held: Appeal dismissed. In view of the applicant's lack of assets, a paucity of friends, a possibly tenuous relationship with a woman, his wife and son back in the United States, as is the rest of his family, and a most serious criminal offence, there are no grounds to grant a special relief.

Coram: A.B. Weselak (Vice-Chairman), E. Teitelbaum and D. Davey Case heard:  
in Toronto, October 31, 1979 Judgment pronounced: October 31, 1979 Reasons by:  
E. Teitelbaum (in English; 3 pp.), concurred in by A.B. Weselak and D. Davey Docket  
no.: 78-9143 Counsel: P.D. Copeland, Esq., for the appellant; M. Prue, Esq., for  
the respondent.

---

13.20 Minister of Employment and Immigration v. Rana Chana

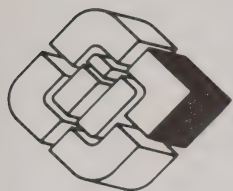
MOTION - JURISDICTION OF BOARD - APPEAL NOT FILED WITHIN TIME LIMIT - RIGHT OF APPEAL OF SPONSOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), (3), 79 - IMMIGRATION REGULATIONS, 1978, S. 41 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 17

The applicant filed a motion contesting the jurisdiction of the Board to hear an appeal from a refusal of a sponsorship because the appeal was not made within the time limit. At the time the letter of refusal was made the sponsor was not a Canadian citizen, therefore, he did not have the right of appeal and did not acquire that right within the thirty days provided for filing an appeal. Nearly a year later, the department wrote a letter, to the appellant's counsel, relating to the equivalent provisions under the new Immigration Act. Seven days later the applicant now a Canadian citizen, prepared a Notice of appeal based on that letter.

Held: Motion allowed. The first refusal letter is based on the provisions of the Immigration Act, 1952 and the Immigration Regulations, Part I. This legislation was repealed and the Immigration Act, 1976 proclaimed on April 10, 1978. As a result, the refusal letter is a nullity. Whatever the deficiencies of that refusal letter, the process of appeal flows only from the refusal as set out in the letter. Not having been a Canadian citizen at the time, the applicant was without a right of appeal. The subsequent letter addressed to the applicant's counsel is a response to a question by him in his capacity as the applicant's solicitor. It does not meet the requirement to provide the reasons for the refusal to the sponsor as set out in Regulation 41. It is not a refusal letter and no rights of appeal flow from it.

Mangat, Rajdevinder Singh v. M.E.I. (I.A.B. 78-6163), Scott, Campbell, Glogowski, May 30, 1979 (See CLIC, No. 9.2, November 26, 1979).

Coram: C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay Case heard:  
in Winnipeg, October 29, 1979 Judgment pronounced: October 30, 1979 Reasons by:  
C.M. Campbell (in English; 5 pp.), concurred in by U. Benedetti and R. Tremblay Docket  
no.: 79-6137 Counsel: I.D. Munn, Esq., for the applicant; D. Matas, Barrister and  
Solicitor, for the respondent.



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 14

Date April 14, 1980

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



## SPONSORSHIPS

14.1	79-9170	Sukhram, Anne Marie v. Minister of Employment and Immigration
14.2	79-6085	Hernandez, Adelaida Pantua v. Minister of Employment and Immigration
14.3	78-6060	Wong, Chung-Kin v. Minister of Employment and Immigration
14.4	79-9074	Mohammad, Fawida v. Minister of Employment and Immigration
14.5	79-1018	Alam, Mansoor v. Minister of Employment and Immigration
14.6	79-1094	Theodore, Joseph Abner v. Minister of Employment and Immigration
14.17	79-3024	Minister of Employment and Immigration v. Dhaliwal, Charajit Kaur

## REFUGEES

14.7	79-9100	Munoz, Alfredo Enrique (Ponce) v. Minister of Employment and Immigration
14.8	79-9191	Yacoub, Yacoub Kamil
14.9	79-1036	Oyarzun, Ana Maria Contreras v. Minister of Employment and Immigration
14.10	79-1034	Zubieta, Wilfredo Alejandro and his wife Villaverde, Gladys
	79-1034A	Aurea Masaki v. Minister of Employment and Immigration
14.11	79-9059	Borquez, Sergio Fredy (Valdes)
14.12	79-1204	Meghdessian, Zohrab Khoren
14.13	79-6233	Khaliq, Abdul
14.14	79-1222	Ficciella Munizaga, Jose Salvador
14.15	79-9435	Hamilton, Nancy Ann

## MOTIONS

14.16	79-3028	Rydeard, Gary v. Minister of Employment and Immigration
14.17	79-3024	Minister of Employment and Immigration v. Dhaliwal, Charajit Kaur

## REMOVAL ORDERS

14.18	79-9131	Andrade, Eduardo Manuel Carreiro v. Minister of Employment and Immigration
14.19	78-1075	Altaji, Sadi v. Minister of Employment and Immigration

## PROCEDURE

14.20	79-1041	Velasquez, Julio Antonio v. Minister of Employment and Immigration
-------	---------	--

## EVIDENCE

14.5	79-1018	Alam, Mansoor v. Minister of Employment and Immigration
14.10	79-1034	Zubieta, Wilfredo Alejandro and his wife Villaverde, Gladys
	79-1034A	Aurea Masaki v. Minister of Employment and Immigration
14.12	79-1204	Meghdessian, Zohrab Khoren

## JURISDICTION OF BOARD

14.6	79-1094	Theodore, Joseph Abner v. Minister of Employment and Immigration
14.9	79-1036	Oyarzun, Ana Maria Contreras v. Minister of Employment and Immigration
14.17	79-3024	Minister of Employment and Immigration v. Dhaliwal, Charajit Kaur

## NOTE

RE: Filip Zimmerman v. Minister of Employment and Immigration  
CLIC 13.4, March 27, 1980

A sentence is added:

Held: Appeal allowed on legal and equitable grounds.

14.1 Anne Marie Sukhram v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE PREVIOUSLY DEPORTED FROM CANADA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), (i), (j), 57, 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(p)

The appellant filed an application to sponsor the application for landing into Canada of her husband which application was refused on the ground that he has been previously deported from Canada, because he had been found not to be a genuine visitor.

**Held:** Appeal allowed on equitable grounds. The evidence as a whole and the statements of policy in the Immigration Act, 1976 were considered. While the Board does not condone the sponsoree's behaviour in Canada during the period of stay when he was here for 3½ years illegally, nevertheless, there is no indication that the sponsoree was ever convicted of any offence, was ever charged or that he is of a criminal nature. The order of deportation is based on a technical provision of the Immigration Act, 1952 (repealed).

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum **Case heard:** in Toronto, October 25, 1979 **Judgment pronounced:** October 25, 1979 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:** 79-9170 **Counsel:** S. Ramkissoon, Esq., for the appellant; D. Taylor, Esq., for the respondent.

---

14.2 Adelaida Pantua Hernandez v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - REHABILITATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 79

The appellant filed an application to sponsor the application for landing in Canada of her father, his wife and his four children. The application was refused in respect of the father on the ground that he had been convicted of a criminal offence, namely frustrated homicide for which a maximum term of imprisonment of ten years or more may be imposed. In the second application for landing, it was found by the visa officer that the father had deliberately misrepresented the age of one of the sons. Further, in his initial application the father denied his involvement in the crime which is the basis of the refusal, and subsequently misrepresented the circumstances of that event. The visa officer expressed the opinion, that all of this does not reflect rehabilitation.

**Held:** Appeal dismissed. The refusal is in accordance with the law. The appellant impressed the Board as an intelligent, capable young lady who has chosen to come to Canada, appears to be doing well in this country and will continue to make progress. However, she has not established a base from which she could handle the burden that would be hers were these family members admitted to Canada.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:** in Winnipeg, October 30, 1979 **Judgment pronounced:** October 30, 1979 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by U. Benedetti and R. Tremblay **Docket no.:** 79-6085 **Counsel:** I.D. Munn, Esq., for the respondent.

---

14.3 Chung-Kin Wong v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT FREE TO MARRY - PROOF TO THE EFFECT HE WAS NEVER MARRIED

The appellant filed an application to sponsor the application for landing in Canada of his fiancé, which application was refused on the ground that he was already married and not free to marry. When he first arrived in Canada, as a landed immigrant, he was accompanied by a woman whom he described as being his wife and two girls who he described as being his daughters. His evidence is now that the woman was not in fact his wife and one of the daughters was not his daughter. He acknowledges that he deceived the visa officer and that they had lived in a common-law relationship.

Held: Appeal allowed. Beyond the deceptive statement made by the appellant at the time of his immigration, there is no record in the evidence of a marriage. Accordingly he is free to marry the sponsoree on her arrival in Canada.

Coram: C.M. Campbell (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Regina, October 23, 1978 and December 5, 1979 Judgment pronounced: December 5, 1979 Reasons by: C.M. Campbell (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 78-6060 Counsel: R.J. Rushford, Barrister and Solicitor, for the appellant; C.J. Dickey and D.M. Hanbury, Esq., for the respondent.

---

#### 14.4 Fawida Mohammad v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE HAVE BEEN ORDERED DEPORTED - RETURN TO CANADA WITHOUT THE CONSENT OF THE MINISTER - SPONSOREE NOT FREE TO MARRY - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 35 - IMMIGRATION REGULATIONS, PART I, S. 36

The appellant filed an application to sponsor the application for landing in Canada of her husband whose application has been refused on the ground that he had been already ordered deported from Canada and has returned without the consent of the Minister. The other ground for refusal was that the sponsoree was not free to marry the appellant. It was alleged that he was married in his country before he came here.

Held: Appeal allowed on equitable grounds. There was insufficient evidence of a previous marriage or that this marriage was contracted strictly and solely for purposes of facilitating the sponsoree's re-entry to Canada.

D. Davey (dissenting)

I would dismiss the appeal. The applicant knew her husband was in Canada illegally when she married him. He has family with whom he is now residing in Pakistan. I do not believe that his attitude towards the law and this country's institutions are a solid base for future citizenship in Canada. The appellant, having no criminal record, would be free to join her husband should she so wish.

Goyette, Michel André v. M.E.I. (I.A.B. 78-1073), Houle, Glogowski, Tremblay, March 23, 1979 (See CLIC, No. 5.12, August 3, 1979).

Coram: A.B. Weselak (Vice-Chairman), E. Teitelbaum and D. Davey (Dissenting) Case heard: in Toronto, November 14, 1979 Judgment pronounced: December 11, 1979 Reasons by: E. Teitelbaum (in English; 5 pp.), concurred in by A.B. Weselak Dissenting reasons by: D. Davey (5 pp.) Docket no.: 78-9074 Counsel: M. Drukarsh, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

#### 14.5 Mansoor Alam v. Minister of Employment and Immigration

SPONSORSHIP - IDENTITY OF ONE OF THE SPONSOREE - EVIDENCE - FOREIGN DOCUMENT - BIRTH CERTIFICATE - AUTHENTICITY

EVIDENCE - FOREIGN DOCUMENT - BIRTH CERTIFICATE - AUTHENTICITY - SPONSORSHIP - IDENTITY OF ONE OF THE SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 5(1) - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 31(2)

The appellant filed an application to sponsor the application for landing in Canada of his parents and of his two brothers. The application was refused in respect of one of the brothers in that he could not establish his relationship with his father. A birth certificate was produced but the respondent's counsel questioned its validity, there is no date of issue on it, and the fact that when the father was interviewed he did not show a birth certificate he said it takes a long time to obtain it and it just had been presented before the first hearing, not accompanied by an affidavit. The respondent was given time to have the document authenticated and at the second hearing the respondent stated that he tried to do everything to verify the authenticity of the document but could not find anything more so he was relying on the record.

**Held:** Appeal allowed on legal grounds. There is no doubt that the brother sponsored is the real son of the father sponsored.

**Coram:** J.V. Scott (Chairman), G. Loiselle and E. Teitelbaum **Case heard:** in Montreal, July 16 and December 13, 1979 **Judgment pronounced:** December 13, 1979  
**Reasons by:** G. Loiselle (in French; 6 pp.), concurred in by J.V. Scott and E. Teitelbaum **Docket no.:** 79-1018 **Counsel:** F. Philibert, Barrister and Solicitor, for the appellant; M.A. Kulba and J.R. St. Louis, Esq., for the respondent.

---

14.6 Joseph Abner Theodore v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - SPONSOR NOT INFORMED OF HIS RIGHT OF APPEAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

JURISDICTION OF BOARD - LATE FILING OF APPEAL - RIGHT OF APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2) - IMMIGRATION REGULATIONS, 1978, S. 41(2) - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 17

The appellant filed an application to sponsor the application for landing in Canada of his wife which application was refused on the grounds that it was submitted only to facilitate her admission to Canada and that she was not in possession of a valid visa. The sponsor in the letter of refusal was not informed of his right of appeal. He was not informed because at the time he made his application, he was not a Canadian citizen. However, he had acquired Canadian citizenship at the time of the refusal and it is only when he went to see his counsel that he learned about his right of appeal. The counsel of the respondent filed, in the course of the proceedings, a motion contesting the jurisdiction of the Board in that the Notice of appeal was filed too late.

**Held:** The Board has jurisdiction to hear the appeal. It is quite comprehensible that the appellant was not advised of his right of appeal in the refusal letter because the department did not know that he had become a Canadian citizen in the laps of time between his application and the refusal. This is a situation that happens quite rarely. To be fair and just, it is decided that the time prescribed to file the appeal should be calculated only from the time the appellant found out of his right of appeal, that is when his counsel told him, so he was within the time limit in filing his Notice of appeal.

Appeal allowed on equitable grounds. From the testimonies heard and the evidence adduced, it appears that both the appellant and his wife form an harmonious couple.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, December 11, 1979 **Judgment pronounced:** December 13, 1979 **Reasons by:** R. Tremblay (in French; 5 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1094 **Counsel:** P. Duquette, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

14.7 Alfredo Enrique Munoz (Ponce) v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(2)

The applicant, a citizen of Chile, filed a claim to refugee status on the ground that being a member of a political group he was, after the coup, arrested, detained, and tortured. There was two examinations and the testimony in the two of them are different and sometimes contradictory.

**Held:** Application having been allowed to proceed, the applicant is determined not to be a Convention refugee. The applicant contradicted himself on several occasions and during the two days of his redetermination hearing his testimony, at times, lacked credibility.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, June 12 and 13, 1979 **Judgment pronounced:** June 14, 1979 **Reasons by:** U. Benedetti (in English; 8 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 79-9100 **Counsel:** F. Rotter, Barrister and Solicitor, for the applicant; M. Prue, Esq., for the respondent.

---

14.8 Yacoub Kamil Yacoub

REFUGEE - REDETERMINATION - FEAR PERSECUTION FOR POLITICAL AND RELIGIOUS REASONS - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Iraq, is claiming refugee status on the grounds that he fears persecution for political and religious reasons. He alleged that he was victim of several maltreatments and harassments because of these activities.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The applicant is not a credible witness as his stories in the examination under oath and in his declaration are in contradiction. He was not truthful with the visa officer in Iraq or with the Immigration officer at the port of entry. Upon his arrival he did not ask for political refugee status and the political or religious situation did not change in Iraq while he was in Canada as a visitor.

**Coram:** A.B. Weselak (Vice-Chairman), J.-P. Houle and U. Benedetti **Case heard:** in Toronto, June 19, 1979 **Judgment pronounced:** June 19, 1979 **Reasons by:** U. Benedetti (in English; 5 pp.), concurred in by A.B. Weselak and J.-P. Houle **Docket no.:** 79-9191.

---

14.9 Ana Maria Contreras Oyarzun v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - JURISDICTION OF BOARD - LATE FILING OF APPLICATION - COMPUTATION OF TIME

JURISDICTION OF BOARD - LATE FILING OF APPLICATION - COMPUTATION OF TIME - REFUGEE - REDETERMINATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 48(1), 70, 71, 72, 123 - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant filed an application for redetermination of her refugee claim. She, according to the record, was informed of the refusal of the Minister more than a month before she filed her application. Can the seven days period be enlarged by the Board?

**Held:** Application dismissed for want of jurisdiction. It has no jurisdiction to enlarge the time prescribed by statute. As for the computation of time prescribed that is seven days, the applicant is informed of the refusal of the Minister when he receives it. The seven days should start to run the day after the refusal is received, for example, if the seventh day is a Sunday, the following Monday would be the last day. The Act or the Regulations do not mention seven clear days.

Holec, Jaroslav v. M.M.I. (F.C.A., no. A-382-75), Urie, Ryan, MacKay, November 12, 1975 (not yet reported); Duarte v. M.M.I. 6 I.A.C. 377/381; Prata v. M.M.I. [1976] 1 S.C.R. 376; 52 D.L.R. (3d) 383; Hudson Fashion Shoppe [1926] S.C.R. 26; Inzunza Orellana, Ricardo Andres v. M.E.I. (F.C.A., no. A-9-79), Heald, Ryan, Kelly, July 25, 1979 (not yet reported).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, September 10, 1979 **Judgment pronounced:** October 31, 1979 **Reasons by:** J.-P. Houle (in French; 9 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1036 **Counsel:** G. Sciortino, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

14.10 Wilfredo Alejandro Zubieta and his wife Gladys Aurea Masaki Villaverde v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - REFUGEE IN POSSESSION OF A PASSPORT - MEMBER OF A PARTICULAR SOCIAL GROUP - CREDIBILITY

The applicants, citizens of Peru, arrived in Canada in possession of passports, they are claiming refugee status on the ground that because the male applicant was a member of the General Confederation of Workers, he was laid off by the company for which he was working because of syndicate activities, that were considered illegal by the Peruvian government. After he had lost his job, he tried to be self-employed, as a contractor but the authorities always did intervene and he was unsuccessful. Also the applicant stated that he several times was arrested and maltreated.

**Held:** Application being allowed to proceed. The applicants are determined to be Convention refugees. The applicant has established without contradiction that he was a member, in his country of origin of a particular social group and that as such he was victim of persecution and suffered maltreatments. The fact that the applicant was in possession of a passport when he arrived in Canada and that he had it renewed several times does not mean that he had availed himself of the protection of his country. A passport is only a travel document delivered by a country to one of its citizen in order that he can go in another country.

Inzunza Orellana, Ricardo Andres v. M.E.I. (F.C.A., no. A-9-79), Kelly, Heald, Ryan, July 25, 1979 (not yet reported).

EVIDENCE - PRODUCTION OF DOCUMENTS - AFFIDAVITS - MINUTES OF THE EXAMINATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 6(1)

The allegations referring to the fact that the applicant was maltreated were confirmed by his wife and sister with affidavits. These affidavits were only produced before the hearing and they were in Spanish. These documents were translated but were not certified and the Court asked the interpret to translate them. Also at the hearing, another question was raised, the respondent did asked a question referring to the minutes of the examination under oath. Was this appropriate?

**Held:** The affidavits that were produced were not in accordance with Rule 6(2) of the Immigration Appeal Board Rules in that they were not in one of the official languages, and that is why the Board has asked the interpret to translate them at the hearing. They served as supplement evidence to corroborate what had been said. The minutes of the examination under oath and the declaration of the applicant can be used in a counter-interrogatory at the hearing of the redetermination of a refugee claim, it is part of a continuing procedure of the case. However, the Board will always be able to judge if the questions asked are pertinent.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, September 12, 1979 **Judgment pronounced:** October 31, 1979 **Reasons by:** J.-P. Houle (in French; 7 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1034 and 79-1034A **Counsel:** W.G. Morris, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

14.11 Sergio Fredy Borquez (Valdes)

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(2)

The applicant, a citizen of Chile, is claiming refugee status on the ground that being a member of the Socialist Party, he was told, after the coup, that he was not allowed to study or work; he was also arrested, detained for two weeks, tortured and questioned.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. On reviewing the evidence, the applicant was not completely truthful. It appears incredible that the authorities were trying to obtain information from a young and unimportant member of the Socialist Party for a period of three years and that they kept him under constant surveillance, not allowing him to attend school or to work, but never requested him to report to the police or the military authorities. It is also noted that the applicant did not encounter any difficulties in going in Argentina in 1975 and although by then he had suffered four arrests, he never did apply for refugee status during his seven months residence in that country nor did he encounter any problems in obtaining his passport and leaving his country.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, September 11, 1979 and November 21, 1979 **Judgment pronounced:** November 21, 1979 **Reasons by:** U. Benedetti (in English; 5 pp.), concurred in by A.B. Weselak and E. Teitelbaum **Docket no.:** 79-9059

---

14.12 Zohrab Khoren Meghdessian

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - EVIDENCE - LACK OF

EVIDENCE - PERSECUTION - LACK OF - REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70

The applicant, a citizen of Lebanon, is claiming refugee status for humanitarian reasons. He claims that during the civil war in Lebanon, he was in a difficult position, since as an armenian Christian "in the Moslem part he was Christian, in the Christian part he was Armenian". He was never molested or arrested by the authorities but apparently was hit twice by the "militia". The Lebanese arabs in his neighbourhood wished the armenians people to join with them to fight, he had no desire to fight.

**Held:** Application refused to proceed, the applicant is determined not to be a Convention refugee. "Persecution" must be shown to be conducted by the authorities in power in the country in respect of which the person claims to be a refugee, or with their tacit approval. No such proof was brought forward in the instant case. If the applicant is a refugee at all, of which there is little or no evidence, he is a refugee from a civil war, not a Convention refugee within the meaning of the Act.

Mingot v. M.M.I. 8 I.A.C. 351; Cuevas-Puente, Juan de la Cruz v. M.E.I. (I.A.B. 79-1117), Houle, Tremblay, Teitelbaum, August 28, 1979 (See CLIC, No. 11.17, January 25, 1980); Jomaa, Muhieddine Abdul Wahab v. M.E.I. (I.A.B. 79-9032), Weselak, Davey, Teitelbaum, May 8, 1979 (See CLIC, No. 7.17, October 9, 1979).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** in Montreal, November 21, 1979 **Judgment pronounced:** November 21, 1979 **Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1204

14.13

Abdul Khaliq

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY

The applicant, a citizen of Pakistan, is claiming refugee status on the ground that he was an active member of the Pakistan People's Party for about four years. He was not involved beyond his village level. He says two of his brothers were also members of the Party during the same period and presumably after he left for Canada, have been harassed but his knowledge of their activity is indefinite. As evidence two letters were produced in which a warning is made to the applicant that he should not return to Pakistan, and in which there is reference to policy inquiry.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The information in one letter with respect to police inquiry is hearsay, there is no evidence of any communication with his brothers or with others in his family indicating any concern for his future in Pakistan.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Vancouver, November 22, 1979 **Judgment pronounced:** November 22, 1979 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-6233.

14.14

Jose Salvador Ficciella Munizaga

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 70, 71 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(h)

The applicant, a citizen of Chile, is claiming refugee status on the ground that because he was a sympathiser of the Allende government he was, after the coup, victim of several economical grievances.

**Held:** Appeal refused to proceed and the applicant is determined not to be a Convention refugee. It is impossible to look into all business transactions of the applicant in his native country and pronounce whether he has real financial grievances against the present regime in Chile. Even if he had, it is not equivalent to persecution. It might be that because of his sympathies to the Allende regime, he was not given the same opportunities and patronage as he enjoyed during the Allende regime. He might be discriminated against by the Pinochet regime, however, discrimination is not persecution which is a key word in the definition of refugee. Furthermore, he remained in Canada 8 months, illegally, before making any claim to refugee status.

Villarroel, Alfredo Nelson Salvatierra v. M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, March 23, 1979 (not yet reported).

**Coram:** F. Glogowski (Vice-Chairman), G. Loiselle and R. Tremblay **Case heard:** in Montreal, December 13, 1979 **Judgment pronounced:** December 13, 1979 **Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by G. Loiselle and R. Tremblay **Docket no.:** 79-1222.

14.15

Nancy Ann Hamilton

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR REASONS OF RELIGION, OF MEMBERSHIP IN A PARTICULAR SOCIAL GROUP AND OF HER POLITICAL OPINION - STATELESS - RENOUNCED TO HER CITIZENSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(b), 27(2), 70, 71

The applicant is claiming refugee status on the grounds of persecution for reasons of religion, of membership in a particular social group and of her political opinion. She also claims that, she went to the United States Embassy in Ottawa where she signed a formal affidavit of her renunciation of her United States citizenship. She followed that by subsequent visits to the United States Consulate in Toronto, but her evidence is that she was not successful in receiving a document in this respect.

Held: Application refused to proceed, and the applicant is determined not to be a Convention refugee. He fears of "persecution" for reasons of religion, nationality, membership in a particular social group or political opinion as recorded in the transcript of the examination seem to be based not on facts but rather on her imagination and apparent persecution complex.

Coram: F. Glogowski (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard:  
in Toronto, December 27, 1979 Judgment pronounced: December 27, 1979 Reasons by:  
F. Glogowski (in English; 5 pp.), concurred in by U. Benedetti and E. Teitelbaum  
Docket no.: 79-9435.

14.16

Gary Rydeard v. Minister of Employment and Immigration

MOTION - LATE FILING OF APPEAL - NOT INFORM OF TIME LIMITATIONS - CONTINUOUS INTEREST - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(d), (2) - IMMIGRATION APPEAL BOARD RULES, RULE 4(2) - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 8(2), 9 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 72(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 11(1)(a)

The applicant filed a motion for late filing of an appeal from an order of deportation. The grounds set out in the motion are that; (1) he was not informed of the time limitations for appealing, nor was he represented at his inquiry, (2) he showed a continuing interest in appealing by endeavouring to obtain assistance from the legal aid, (3) he has been a permanent resident of Canada since 1968 and all his immediate family including a son are Canadian citizens.

Held: Motion dismissed. There is no principle of law which obliges an inquiry officer to advise a person who has declined to exercise his right of appeal of any time limit or other details relating to an appeal. He was informed of his right of appeal and when he stated he did not wish to appeal, the Special Inquiry Officer was under no further obligation in this regard. Procedural provisions are retroactive and the Board has jurisdiction to apply rule 8(2) of the Immigration Appeal Board Rules (1978), notwithstanding the fact that the deportation order was made before this rule was promulgated. However in this case, there are no grounds to do so. Late filing is not granted automatically. The applicant was in a penitentiary when the order of deportation was made and apparently he was still incarcerated at the date of the motion. He did not communicate with the legal aid until three months after he knew he had been ordered deported and made no further efforts to obtain legal assistance until almost a year after when he apparently communicated with his father's lawyer.

Trisich v. M.M.I. 5 I.A.C. 392/400.

Coram: J.V. Scott (Chairman), F. Glogowski and R. Tremblay Case heard: in Ottawa,  
October 12, 1979 Judgment pronounced: October 12, 1979 Reasons by: J.V. Scott  
(in English; 4 pp.), concurred in by F. Glogowski and R. Tremblay Docket no.:  
79-3028 Counsel: J. Willmot, Articling Student, for the applicant; W. Bernhardt,  
Esq., for the respondent.

14.17 Minister of Employment and Immigration v. Charajit Kaur Dhaliwal

MOTION - MINISTER'S MOTION - JURISDICTION OF BOARD - SPONSORSHIP - REFUSAL SUBSEQUENT TO THE SPONSORED APPLICATION - RIGHT OF APPEAL

JURISDICTION OF BOARD - SPONSORSHIP - REFUSAL SUBSEQUENT TO THE SPONSORED APPLICATION - RIGHT OF APPEAL

SPONSORSHIP - JURISDICTION OF BOARD - REFUSAL SUBSEQUENT TO THE SPONSORED APPLICATION - RIGHT OF APPEAL - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 41 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79(1), (2) - IMMIGRATION REGULATIONS, 1978, S. 6(1)

The applicant, the Minister of Employment and Immigration filed a motion contesting the jurisdiction of the Immigration Appeal Board in an appeal by a sponsor on the ground that the Notice of refusal is not a Notice of refusal of a sponsored application for landing since the said application was made subsequent to the said Notice of refusal. The applicant's counsel argued that since the letter of refusal predated the application for landing, there was nothing to refuse and nothing to appeal from.

**Held:** Motion allowed. Notwithstanding the fact that the refusal may be based on section 79(1)(a), which it was here, the right of appeal arises not from a refusal of an application to sponsor, but from a refusal of an application for landing which is sponsored. In the instant case, the refusal was premature; it is not a refusal of an application for landing and for the purposes of an appeal therefrom it is a nullity. However, in the circumstances, to preserve the rights of the applicant for landing and his dependents, the Board orders that the Minister of Employment and Immigration continue to process the application for landing.

Sleiman, Roxanne Madeline v. M.E.I. (I.A.B. 78-6209), Campbell, Glogowski, Tremblay, February 26, 1979 (See CLIC, No. 6.18, August 24, 1979).

**Coram:** J.V. Scott (Chairman), F. Glogowski and E. Teitelbaum  
**Judgment pronounced:** December 12, 1979  
**Case heard:** in Ottawa, December 12, 1979  
**Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by F. Glogowski and E. Teitelbaum  
**Docket no.:** 79-3024  
**Counsel:** G.A. Goodes, Esq., for the applicant; D. Gilhooly, Barrister and Solicitor, for the respondent.

---

14.18 Eduardo Manuel Carreiro Andrade v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF SEVERAL CRIMES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(ii), 72(1)(b) - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, SS. 3(1), 4(2)

The appellant, a permanent resident, was ordered deported on the ground that he was convicted for the possession of a narcotic, possession for the purpose of trafficking, break and entry and robberies.

**Held:** Appeal dismissed. The appellant has been before the courts regularly since he was eighteen. He shows no understanding of the cost to society, his family or himself. While he might be of some assistance in the support of his parents in the future, clearly his sister has and will continue to assume that responsibility. As well, there are other members of the family in Canada who could assist. He has not been able to reconcile the values of his family to his new environment. If he is returned to Portugal, he does have family there.

Lee, Kai v. M.E.I. (F.C.A., no. A-17-79), Kelly, Urie, Kerr, June 20, 1979 (not yet reported).

F. Glogowski (dissenting)

Having regard to all the circumstances of the case, the person should not be removed from Canada.

1. The appellant is a landed immigrant in Canada since April 17, 1972.
2. He lived in this country for over seven years and came to Canada with his family at the tender age of 15.
3. To some extent, he is a product of Canadian environment, as his family in Canada i.e. his parents, married brother and married sister who are much older than the appellant, are all decent and hard working and contributing members of the Canadian society.
4. Although Mr. Andrade has a rather long criminal record, I do not consider him, having observed him in the witness box for several hours, to be a habitual criminal.
5. His work record appears to be fairly good. He never, except while in jail, was a public charge.

He should be given a chance to prove to himself, to his family and to the Canadian community at large that he can rehabilitate and be a useful resident of Canada. I would direct that the execution of the removal order be stayed for two years.

Coram: F. Glogowski (Vice-Chairman), (Dissenting), D. Davey and E. Teitelbaum Case heard: in Toronto, August 1, 1979 Judgment pronounced: September 6, 1979 Reasons by: D. Davey (in English; 5 pp.), concurred in by E. Teitelbaum Dissenting reasons by: F. Glogowski (2 pp.) Docket no.: 79-9131 Counsel: M.G. Bouchard, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

14.19 Sadi Altaji v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - NOT A GENUINE VISITOR - CONVICTED OF A CRIMINAL OFFENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), (h), 76(3)(b)

The appellant, a permanent resident, has been ordered deported on the grounds that he was found not to be a genuine visitor and that he was convicted of a criminal offence namely having cashed a blank cheque of \$3,000.00 in the United States. The Board has first ordered a stay to the execution of the order of deportation in order that the appellant could solve his difficulties with the American government. He is a citizen of Jordan but on his way to the United States and Canada he stayed in Koweit and in Libanon. He was deported from the United States and he claims that he cannot return to either his country of origin or Koweit or Lebanon because of the civil war.

Held: Appeal dismissed, stay of execution of the order of deportation cancelled and execution of the order of deportation directed as soon as reasonably practicable. It is quite possible that the applicant has a legitimate fear of returning in Fordan, Koweit or Lebanon Because of the situation of war in these countries but it is not a redetermination of a refugee claim that the Board has to decide in the instant case. There is also provisions that can be used by the appellant where he can choose a third country that would may be give him azylum.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, February 14, April 3, May 8 and December 6, 1979 Judgment pronounced: December 6, 1979 Reasons by: J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 78-1075 Counsel: W.J. Postelnik, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

14.20

Julio Antonio Velasquez V. Minister of Employment and Immigration

PROCEDURE - WHETHER NOTICE OF HEARING SENT TO THE COUNSEL INSTEAD TO THE APPLICANT IN ACCORDANCE WITH RULE 24 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70, 71, 78, 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 24

The applicant has filed an application to refugee status which have been allowed to proceed. The first hearing had been adjourned because the applicant's counsel had not received the Notice of hearing, at the second hearing the applicant was not present and neither his counsel nor the Minister's counsel could give any reason for this absence. The Board's order adjourning to a subsequent date and the Notice of the next date of hearing were sent to the applicant's counsel and not to the applicant personally.

Held: Appeal dismissed. The applicant did not inform his counsel nor the Board of his whereabouts and had not mandated his counsel to explain his absence. Furthermore, his counsel did not hear from his client since the first hearing.

G. Loiselle (dissenting)

The applicant was not informed personally of the subsequent date of hearing, his counsel was the only one informed. I would give another opportunity to the applicant, if he communicates either with his counsel or the Department in order to hear his explanations on why he did not communicate with his counsel since the first hearing.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle (Dissenting) Case heard: in Montreal, November 8, 1979 and January 9, 1980 Judgment pronounced: January 9, 1980 Reasons by: J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay Dissenting reasons by: G. Loiselle (3 pp.) Docket no.: 79-1041  
Counsel: P. Duquette, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

ISSN 0225-1620

LAG

CAI  
MIP1  
- 152

# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 15

Date May 28, 1980

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

15.1	78-6095	Toh, Margaret Quai Van v. Minister of Employment and Immigration
15.2	79-6123	Thind, Sagudarpal Kaur v. Minister of Employment and Immigration
15.3	79-6113	Kang, Surinder Kaur v. Minister of Employment and Immigration
15.4	78-6206	Chan, Wai Har v. Minister of Employment and Immigration
15.5	78-6107	Bauchman, Cynthia Leigh v. Minister of Employment and Immigration
15.6	79-6118	Gill, Jashmir Kaur v. Minister of Employment and Immigration
15.7	79-9460	Simkhaev, Eleanor v. Minister of Employment and Immigration
15.8	79-9281	Ramcharan, Banmati v. Minister of Employment and Immigration
15.9	79-9108	Shakiri, Rasim v. Minister of Employment and Immigration

#### REFUGEES

15.10	79-1029	Diaz, Luis Alfredo v. Minister of Employment and Immigration
15.11	79-1104	Kamel, Victor Fathy
15.12	79-1099	Lazo Kloppling, Gabriel Antonio
15.13	79-9082	Tokcan, Huseyin Turgay and his wife Tokcan, Ilknur
15.14	79-1048	Ibarra Verdejo, Ambrosio Hernan v. Minister of Employment and Immigration
15.15	79-6140	Narine, Azam Faceed v. Minister of Employment and Immigration
15.16	78-9198	Leiva-Sanchez, Octavio Enrique
15.19	79-1046	De Villarreal, Veronica Maria Rodriguez v. Minister of Employment and Immigration

#### REMOVAL ORDERS

15.17	79-1056	Goncalves, Lourenco Antonio v. Minister of Employment and Immigration
15.18	79-6082	Santos, Manicito Vicedo Jr. v. Minister of Employment and Immigration
15.20	79-1096	Da Costa, Francesco Araujo v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

15.19	79-1046	De Villarreal, Veronica Maria Rodriguez v. Minister of Employment and Immigration
15.20	79-1096	Da Costa, Francesco Araujo v. Minister of Employment and Immigration

#### EVIDENCE

15.14	79-1048	Ibarra Verdejo, Ambrosio Hernan v. Minister of Employment and Immigration
-------	---------	---

15.1

Margaret Ouai Van Toh v. Minister of Employment and Immigration

SPONSORSHIP - IDENTITY AND RELATIONSHIP OF SPONSOREE - ADOPTION - FOREIGN LAW - PROOF - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17

The appellant filed an application to sponsor the application for landing in Canada of a person she claims is her adopted daughter. The application was refused on the ground that there was not sufficient evidence establishing the identity, age, family relationship of the sponsoree. As evidence produced supporting the adoption, there were two statutory declarations made by a man, living in Malaysia, in the village where the sponsor and sponsoree come from; one declaration stating that he attended a dinner and a celebration in honour of the adoption and the other statutory declaration in the same terms but including the birthdate of the purported adopted child. The year shown is consistent with the birthdate shown on the application. There is no supporting evidence from any member of the family. A Deed of Adoption was also produced but it does not mention an earlier adoption by custom. At the time the Deed was made, the daughter was fifteen years old, and was living with her grandmother. As evidence was also produced a letter from the office of the Chief Minister of Malaysia declaring the Deed of Adoption to be void ab initio under Sabah Law. This was not challenged by the appellant. A reply to this letter was produced confirming that a custom adoption was valid, as well as a statutory declaration from an advocate of the High Court in Malaysia confirming that the adoption according to Chinese customs has been recognized by the Court in Malaysia. A professor of Sociology, a specialist in Chinese society, gave also evidence to the same effect, at the hearing.

**Held:** Application refused. If indeed an adoption took place in a ceremony carried out in accordance with Chinese custom it is reasonable to expect the objective to be a parent/child relationship and that such would have developed between the sponsor and the sponsoree. The professor spoke of the celebration making the transfer of the child and the obligation from one family to the other. There was no evidence if ever the sponsor lived with the sponsoree. On entering Canada she declared her mother and not her alleged daughter, as her closest relative. A year or two later, she unsuccessfully sponsored for admission into Canada a niece rather than her alleged daughter. There are discrepancies relating to the date of the customary adoption, discrepancies in the declaration made by the family friend and the sponsor herself. There is no evidence that a mother/daughter relationship exists or has ever existed between the appellant and the sponsoree, although a relationship appears to have existed between the child and her grandmother. Accordingly, the Board does not accept that an adoption in accordance with local custom ever existed.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:** in Vancouver, October 23, 1979 **Judgment pronounced:** October 24, 1979 **Reasons by:** C.M. Campbell (in English; 8 pp.), concurred in by U. Benedetti and R. Tremblay **Docket no.:** 78-6095 **Counsel:** A.J. Lee, Barrister and Solicitor, for the appellant; D.M. Hanbury and I.D. Munn, Esq., for the respondent.

15.2

Sagudarpal Kaur Thind v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - MISREPRESENTATION OF A MATERIAL FACT - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant filed an application to sponsor the application for landing in Canada of her husband which application was refused on the ground that the sponsoree had not answered truthfully all questions put to him by the visa officer, relating to his admissibility, including satisfactory evidence to establish his relationship to the sponsor.

**Held:** Appeal dismissed. Both the sponsor and the sponsoree are without credibility and the Board finds no basis for reversing the decision of the visa officer. The appellant is in Canada alone having cut her ties with her only relative, an uncle, and there is no impediment to her returning to her native country and her family in India if she so chooses.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:**  
in Vancouver, October 25, 1979 **Judgment pronounced:** October 25, 1979 **Reasons by:**  
C.M. Campbell (in English; 4 pp.), concurred in by U. Benedetti and R. Tremblay  
**Docket no.:** 79-6123 **Counsel:** R. Pandya, Barrister and Solicitor, for the appellant;  
D.M. Hanbury, Esq., for the respondent.

---

15.3 Surinder Kaur Kang v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE DID NOT ANSWER TRUTHFULLY ALL QUESTIONS - MATERIALITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 5(1)**

The appellant filed an application to sponsor the application for landing of her father and his six dependants. The application was refused in respect of the father in that he did not answer truthfully all questions put to him by a visa officer, and especially with respect to the ages of himself and his wife.

**Held:** Appeal dismissed. The failure of not having answered truthfully all questions in relation to the ages is material even if section 5(1) of the Immigration Regulations, 1978 provides that parents that are being sponsored are not restricted by their own age. This does not release an immigrant from honestly declaring his age as required on the several documents where this is required.

**Coram:** J.V. Scott (Chairman), C.M. Campbell and E. Teitelbaum **Case heard:** in Vancouver, November 28, 1979 **Judgment pronounced:** November 28, 1979 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by J.V. Scott and E. Teitelbaum  
**Docket no.:** 79-6113 **Counsel:** D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

15.4 Wai Har Chan v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE CONVICTED OF CRIMINAL OFFENCES - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79**

The appellant filed an application to sponsor the application for landing in Canada of her parents and her brother. The application was refused in respect of the father on the ground that he was convicted of crimes, namely simple larceny and five convictions for smoking opium. The appellant's evidence is that her father did not smoke opium since 1976. There is a letter from the Society for the Aid and Rehabilitation of Drug Addicts of Hong Kong to the effect that the sponsoree is free from narcotics at present.

**Held:** Appeal allowed on equitable grounds. Seven of the eight children of the sponsoree are established in Canada with their individual families. It is entirely consistent with the spirit of the Immigration Act that the mother and father be admitted to this country to spend their retirement years surrounded by and in the care of their children. It is equally appropriate that the youngest in the family be admitted with them to join his brothers and sisters in Canada.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and D. Davey **Case heard:** in Vancouver, January 14, 1980 **Judgment pronounced:** January 14, 1980 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 78-6206 **Counsel:** D. Jung, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

15.5

Cynthia Leigh Bauchman v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIME - REHABILITATION - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(d), (t) - IMMIGRATION REGULATIONS, PART I, S. 28(1) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, S. 17

The appellant filed an application to sponsor the application for landing in Canada of her husband which application was refused on the ground that the sponsoree has been convicted of a crime, namely issuing cheques without sufficient funds.

**Held:** Appeal allowed on equitable grounds. The sponsoree's conviction occurred almost 5 years ago. His work record is admittedly dismal. However, the sponsor said he has given her moral support and assisted her at home while she attended school. She is anxious that he become the main income earner and to this end he is enrolled in an introductory radio, T.V. and film course. She is prepared to finance him with help from her family if needed. Together they plan to share the responsibility of child care.

C.M. Campbell (dissenting)

I would dismiss the appeal. If the sponsoree is to become the "main income earner" his record suggest his chances of achieving this goal are better in the United States than they are in Canada. He appears to have close family ties in that country and some possibility of support. The sponsor says her family in Canada is close but there is no evidence of a compelling relationship, and she is prepared to follow her husband. I find no circumstances to justify the granting of special relief.

**Coram:** C.M. Campbell (Vice-Chairman), (Dissenting), A.B. Weselak and D. Davey Case heard: in Vancouver, January 15, 1980 Judgment pronounced: January 15, 1980  
Reasons by: D. Davey (in English; 5 pp.), concurred in by A.B. Weselak Dissenting reasons by: C.M. Campbell (2 pp.) Docket no.: 78-6107 Counsel: D. Vick, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

15.6

Jashmir Kaur Gill v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT GENUINE IMMIGRANT - IMMIGRANT ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79(2)

The appellant filed an application to sponsor the application for landing of her father which application was refused on the ground that he was not seeking lawful permission to come into Canada to establish permanent residence. There is a statutory declaration prepared by an Immigration officer and signed by the father to the effect that the only purpose of the parents for coming to Canada was to get a job and a permanent status for their son, and once that purpose is achieved they would return to India. Their intentions are further re-inforced by the fact that they had not sold nor intended to sell their property in India before leaving for Canada. At the hearing there were testimonies from the sponsor and her husband to the effect that the parents wanted to come over here to stay. There was also at the hearing another affidavit signed by the father where he says that the first statutory declaration did not truly represent the interpretations of the statements he made. His statements have either been partially recorded or distorted. He also stated that he had not sold his house because he kept it for his older sons that are still living in India.

**Held:** Appeal allowed. It is true that the viva voce testimony of the sponsor and her husband as to the intention of the parents is hearsay, but it is corroborated by the father's second affidavit. The cumulative effect of this is to outweigh the first statutory declaration, and it must be noted that the father's explanation as to why he did not intend to sell his land in India is perfectly reasonable.

C.M. Campbell (dissenting)

The issue is one of credibility. The father, his daughter and her husband are all interested in the welfare of the son. The father's second affidavit and the statements of the other two alone do not, for me, have sufficient credibility to justify my reversing the decision of the Immigration officer.

Coram: J.V. Scott (Chairman), C.M. Campbell (Dissenting) and E. Teitelbaum Case  
heard: in Vancouver, November 26, 1979 Judgment pronounced: January 22, 1980  
Reasons by: J.V. Scott (in English; 8 pp.), concurred in by E. Teitelbaum Dissenting  
reasons by: C.M. Campbell (2 pp.) Docket no.: 79-6118 Counsel: D.P. Pandia,  
Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

15.7 Eleanor Simkhaev v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE WOULD BE A PUBLIC CHARGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - REUNIFICATION OF FAMILY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), (2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant filed an application to sponsor the application for landing in Canada of her parents and her brother. The application was refused in respect of the brother on the ground that he was suffering from a health impairment, namely muscular problem, which would cause excessive demands on health services. As a result of this refusal, his parents were also prohibited from entry into this country because the brother was an accompanying dependant of the father.

Held: Appeal allowed on equitable grounds. The witnesses felt that with proper guidance and education the sponsoree could become self-supporting by either obtaining employment at home or in the field of teaching. All the three sisters in Canada appeared to be reasonable well-off, they filed affidavits together with their husbands outlining their assets and also undertaking to see that the sponsorees did not become a public charge. Upon their arrival in Canada, the sponsor stated that she had adequate accommodation to house her parents and her brother. It appear to the Board to be a close knit and responsible family who have a sincere desire to have the remainder of their family reunited with them in Canada.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard: in  
Toronto, February 6, 1980 Judgment pronounced: February 6, 1980 Reasons by:  
A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey Docket  
no.: 79-9460 Counsel: T. Taback, Esq., for the appellant; L. Williams, Esq., for  
the respondent.

---

15.8 Banmati Ramcharan v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE ALREADY DEPORTED FROM CANADA - CONSENT OF MINISTER FOR RETURN - SINCERITY OF SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant filed an application to sponsor the application for landing in Canada of her husband which application was refused on the ground that the sponsoree had already been deported from Canada and does not possess the consent of the Minister to return.

Held: Appeal dismissed. The Board is inclined to concede the sincerity of the marriage of the sponsor to the sponsoree but is not inclined to do so as far as the marriage of the sponsoree to the sponsor is concerned. His evasion and deception of the Immigration authorities in Canada and the United States for the past ten years do not incline the Board to feel that he is deserving a special relief. The sponsor stated at the hearing that if the application of the sponsoree was not approved she would go to Guyana to reside with him. Both the sponsor and sponsoree still have relatives in Guyana and the Board is not inclined to feel that it would be unusual hardship for them to return to Guyana to cohabit together.

Coram: A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum Case heard: in Toronto, February 18, 1980 Judgment pronounced: February 18, 1980 Reasons by: A.B. Weselak (in English; 4 pp.), concurred in by D. Davey and E. Teitelbaum Docket no.: 79-9281 Counsel: M. Drukarsh, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

Reasons from the Bench  
Summary by the Editor

15.9 Rasim Shakiri v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE WOULD BE A PUBLIC CHARGE, THIS ALLEGATION SHOULD BE INCLUDED IN THE MEDICAL CERTIFICATE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

Held: Appeal allowed on legal grounds. It is obvious that neither of the medical certificates have the concurrence of a second medical officer, nor do they specify that this person is likely to be a danger to the public or that her admission would cause or might reasonably cause or be expected to cause excessive demands on health or social services.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, February 19, 1980 Judgment pronounced: February 19, 1980 Reasons from the Bench by: A.B. Weselak (in English; 2 pp), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 79-9108 Counsel: T. Caskie, Esq., for the appellant; D. Taylor, Esq., for the respondent.

---

15.10 Luis Alfredo Diaz v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(2)(b), (e), 45, 70, 71 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 7(1)(c)

The applicant, a citizen of Argentina, is claiming refugee status on the ground that after the coup in 1976, he lost his job because he was a delegate of the syndicate which syndicate had taken position against the coup. He was never interrogated nor arrested.

Held: Appeal having been allowed to proceed, the applicant is determined not to be a Convention refugee. There were contradictions between the declaration under oath and the applicant's testimony at the hearing.

Villarroel, Alfredo Nelson Salvatierra and M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, March 23, 1979 (not yet reported).

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, July 5, 1979 Judgment pronounced: July 5, 1979 Reasons by: R. Tremblay (in French; 5 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 79-1029 Counsel: W.G. Morris, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

15.11

Victor Fathy Kamel

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF RELIGIOUS OPINION - EVADING MILITARY SERVICE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 45, 70, 71

The applicant, a citizen of Egypt, is claiming refugee status on the ground that because he was a Christian in a Muslim majority environment, he was often threatened as a student. The Muslim students were trying to convert the Christian students to the Muslim religion, by offering money or marriage with Muslim girls. He fled his country to avoid his military service and on his way to Canada he passed through at least five countries without claiming refugee status.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. There is no doubt that the applicant will be punished upon his return in his country but all citizens in the same situation would have the same punishment. No article of the Convention provides for army deserter or for conscientious objector.

**Coram:** J.V. Scott (Chairman), R. Tremblay and G. Loiselle  
August 1, 1979 **Judgment pronounced:** August 1, 1979  
French; 5 pp.), concurred in by J.V. Scott and G. Loiselle

**Case heard:** in Montreal,  
**Reasons by:** R. Tremblay (in  
**Docket no.:** 79-1104.

15.12

Gabriel Antonio Lazo Kloppping

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71 - IMMIGRATION REGULATIONS, 1978, S. 40

The applicant, a citizen of Chile, is claiming refugee status on the ground that after the coup in 1973, he was arrested and questioned twice. He also was searched at his home and at his business, by the militaries who were looking for arms.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. During the two years he operated his store he was searched by the militaries but seven months before he closed it voluntarily there were no more of these visits. Difficulties suffered by members of his family had no relationship with him.

**Coram:** J.V. Scott (Chairman), R. Tremblay and G. Loiselle  
August 2, 1979 **Judgment pronounced:** August 2, 1979  
French; 4 pp.), concurred in by J.V. Scott and R. Tremblay

**Case heard:** in Montreal,  
**Reasons by:** G. Loiselle (in  
**Docket no.:** 79-1099.

15.13

Huseyin Turgay Tokcan and his wife Ilknur Tokcan

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE FATHER IS A MEMBER OF THE OPPOSITION IN THE TURKISH PARLIAMENT - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70

The applicant, a citizen of Turkey, is claiming refugee status on the ground that because his father was a member of the opposition in the Turkish parliament, he was persecuted. He stated that he was beaten by the police, but never arrested, had his own business, and owned about 35 acres of land. He claims that when he worked he had found that his office had been ransacked and in shambles, he was, when looking for decent locations, refused office space, on the basis of his political connections, and also he was refused jobs for the same reasons. The female applicant based her claim on that of her husband, although she was represented by counsel at her examination under oath.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. His claim to be a Convention refugee is completely frivolous and an abuse of process. There is no evidence of persecution, his difficulties, in obtaining a municipal or government job may indicate that a system of political patronage exists in Turkey but no more. Furthermore, he waited over a year before applying for refugee status in Canada.

In the circumstances of the case, the examination of the wife sufficiently complied with the requirement of section 45(1) of the Immigration Act, 1976 that a person claiming to be a Convention refugee "shall be examined under oath by a Senior Immigration Officer respecting his claim".

**Coram:** J.V. Scott (Chairman), A.B. Weselak and E. Teitelbaum **Case heard:** in Toronto, November 20, 1979 **Judgment pronounced:** November 20, 1979 **Reasons by:** J.V. Scott (in English; 6 pp.), concurred in by A.B. Weselak and E. Teitelbaum **Docket no.:** 79-9082.

---

15.14 Ambrosio Hernan Ibarra Verdejo v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - EVIDENCE - CREDIBILITY

EVIDENCE - CREDIBILITY - REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70, 71

The applicant, a citizen of Chile, is claiming refugee status on the ground that he always through his studies and his work has been an active member of the Communist Party. He was, in 1970, a professor and later became a cameraman, he was filming situations of the agrarian reform undertaken by the Allende's government. In 1977, he started to work for the "résistance" and wrote pamphlets of propaganda for circulation. As a result of all these activities, he was in 1978, victim of multiple harassments and maltreatments.

**Held:** Application having been allowed to proceed, the applicant is determined to be a Convention Refugee. The evidence adduced was uncontradicted, the arrests and maltreatments suffered by the applicant were confirmed by his wife's testimony.

Inzunza Orellana, Ricardo Andres v. M.E.I. (F.C.A., no. A-9-79), Kelly, Heald, Ryan, July 25, 1979 (not yet reported).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, November 20, 1979 **Judgment pronounced:** November 21, 1979 **Reasons by:** J.-P. Houle (in French; 9 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1048 **Counsel:** P. Duquette, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

15.15 Azam Facedd Narine v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP

The applicant, a citizen of Guyana, is claiming refugee status on the ground that because he was an active member of the Progressive Youth Organization in the distribution of literature and the preparation for meetings, he was victim of multiple harassments. He then left the country in 1973 and returned just before the 1973 election. He immersed himself in party activity, carrying out all of the tasks to be expected of a dedicated party worker, including an active public role in the polling station on election day. When the election was over, he stole the ballot box. He then went into hiding and later fled the country.

**Held:** Application having been allowed to proceed, the applicant is determined not to be a Convention refugee. The applicant fled his country because he stole a ballot box, not because of his political activity during that 1973 election. This activity gave him no problem at that time. When in flight, he never sought refugee status in any of the countries through which he passed. The Board agrees that he is probably wanted in Guyana and that he may face punishment but if so this is related to criminal activity. The freedom with which he operated during the 1973 election does not support a well-founded fear of persecution for political activity.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:**  
In Winnipeg, November 1, 1979 **Judgment pronounced:** December 5, 1979 **Reasons by:**  
C.M. Campbell (in English; 6 pp.), concurred in by U. Benedetti and R. Tremblay **Docket**  
**no.:** 79-6140 **Counsel:** J. Gunn, Barrister and Solicitor, for the applicant; I.D.  
Munn, Esq., for the respondent.

---

15.16

Octavio Enrique Leiva-Sanchez

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - COMMON KNOWLEDGE - CREDIBILITY  
- IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71

The applicant, a citizen of Chile, is claiming refugee status on the ground that because of his political activities he was arrested, detained, beaten, interrogated and maltreated.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. The way the applicant says he obtained his passport and the acquired knowledge of the Board relating to the obtention of a passport do not coincide. Also if the Chilean authorities did order the applicant to report every Thursday after his release and not to leave Santiago, and did in fact consider him to be of such importance as to keep under surveillance, it would not have been possible for him to obtain an exit visa from the police officer at the Santiago airport to travel to Canada. The Board is, therefore, of the opinion that the applicant's story lacks credibility.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in  
Toronto, January 29, 1979 **Judgment pronounced:** January 29, 1979 **Reasons by:**  
U. Benedetti (in English; 10 pp.), concurred in by A.B. Weselak and E. Teitelbaum  
**Docket no.:** 78-9198.

---

15.17

Lourencio Antonio Goncalves v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - IMMIGRATION  
ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 32(2), 72

The appellant, a permanent resident, was ordered deported on the ground that he was admitted into Canada by reason of misrepresentation of a material fact, namely he did not revealed that he was married on his application for admission.

**Held:** Appeal dismissed. The appellant obtained his admission by false representation of his marital status, in that he stated to the Immigration authorities that he was single whereas he was married and further he had a son born of this marriage. The marital status is a material fact and misrepresentation of it will bring into play the consequences of the Act.

Headlam v. M.M.I. 11 I.A.C. 141/149; Khan, Safdar Abdullah v. M.M.I. (I.A.B. 76-9350), Weselak, Benedetti, Petrie, March 9, 1977 (not yet reported); M.M.I. v. Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522; Ebanks, Barbara Elinora v. M.M.I. (F.C.A., no. A-559-76), Jackett, Urie, MacKay, January 11, 1977 (not yet reported); Hilario, Mario Santiago v. M.M.I. (F.C.A., no. A-84-77), Heald, Urie, MacKay, September 27, 1977 (not yet reported).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, November 21, 1979 **Judgment pronounced:** November 21, 1979 **Reasons by:** J.-P. Houle (in French; 5 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1056 **Counsel:** S. Moreau, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

15.18 Manicito Vicedo Santos, Jr. v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - NOT FREE TO MARRY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 27(1)(e)

The appellant arrived in Canada after having been sponsored as a fiancé, was married and was granted landed status. Shortly after he was married to the girl who was his sponsor and, she, having learned that her husband was already married, filed an affidavit in which she declared that when she sponsored her husband she did not know he was not free to marry and that he had told her he had used her to gain permanent resident status in Canada.

**Held:** Appeal dismissed on legal grounds. All documentation relating to the appellant's admission to Canada shows him to be single. The marriage contract, coupled with the evidence relating to the country's marriage laws and procedure given by the priest who married the couple established to the satisfaction of this court that he was in fact married. The Board finds that the appellant was granted landing by reason of misrepresentation of a material fact exercised by himself. Since the appellant was not free to marry he was not sponsorable as a fiancé. Accordingly he was not admissible under any circumstances as a member of the family class. The provisions for special relief are therefore not available to him.

**Coram:** J.V. Scott (Chairman), C.M. Campbell and E. Teitelbaum **Case heard:** in Vancouver, November 27, 1979 **Judgment pronounced:** November 28, 1979 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by J.V. Scott and E. Teitelbaum **Docket no.:** 79-6082 **Counsel:** G.G. Goldstein, Barrister and Solicitor, for the appellant; F.D. Craddock, Esq., for the respondent.

---

15.19 Veronica Maria Rodriguez De Villarreal v. Minister of Employment and Immigration

JURISDICTION OF BOARD - LATE FILING OF APPLICATION - MEANING OF THE WORD "MAKE" - "PRESENTER" - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70, 71 - IMMIGRATION REGULATIONS, 1978, S. 40 - JUVENILE DELINQUENTS ACT, R.S.C. 1970, C.J.3, SS. 37(1), (3)

At the beginning of the hearing, the counsel for the respondent contested the jurisdiction of the Board to hear the application. He pointed out that although it would appear that the applicant signed her application on the sixth day after she was informed of the Minister's refusal, she did not serve this application on an Immigration officer until two days later, the eighth day after she was informed. She was, according to him, outside the seven day period prescribed by Regulation 40(1), being one day late in making her application.

**Held:** The Board has jurisdiction to deal with the matter. The word "make" - "présenter" in sections 70(1) of the Immigration Act, 1976 and 40(1) of the Immigration Regulations, 1978 must be interpreted as widely as possible in order to insure that there is no denial of the right of a refugee claimant to apply to the Board for redetermination. The applicant "made" her application within the prescribed period of seven days, having signed it on the sixth day, and she served it on an Immigration officer within a reasonable period thereafter.

Sherman v. M.E.I. 2 I.A.C. 192/201; R. v. Boisvert, Qué. C.S., April 12, 1978 - 450-36-000012-78; an English translation of the judgment is published in (1979) 44 C.C.C. (2d) 303; Boisvert v. R., Qué., C.A., January 22, 1979 - 500-10-000134-781; an English translation of the judgment is published in (1979) 44 C.C.C. (2d) 573.

#### REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY

The applicant, a citizen of Chile, is claiming refugee status on the ground that because she was an active member of the Socialist Party, she was victim of multiple harassments and maltreatments.

**Held:** Application having been allowed to proceed, the applicant is determined not to be a Convention refugee. She is a credible witness, while part of her motive for leaving Chile and coming to Canada may have been to find her husband, her testimony regarding the conditions of her life in Chile after 1973 is such as to bring her within the definition of Convention refugee.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** in Montreal, December 13, 1979 **Judgment pronounced:** December 13, 1979 **Reasons by:** J.V. Scott (in English; 10 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1046 **Counsel:** R. Dequire, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

#### 15.20 Francesco Araujo Da Costa v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD - RIGHT OF APPEAL - LOSS OF RIGHT OF APPEAL

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE OF CANADA FOR MORE THAN 183 DAYS - NO RETURNING RESIDENT PERMIT - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN SECTION 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8, 19(2)(d), 20(1), 24(2), 32(5)(b), 72

The appellant, upon arrival in Canada, was admitted as a landed immigrant. He, during a lapse of time of nineteen years, has left Canada periodically fourteen times. His wife and his six children during all this period, have remained in Portugal. The last time he went to Portugal he remained outside the country for more than 183 days. He then returned without a permanent resident permit and sought admission as a permanent resident.

**Held:** Appeal dismissed on legal grounds. The appellant is not a permanent resident and does not have the right of appeal. He never had the intention of having his permanent residence in Canada. He was working and making money in Canada, he never bought a home in Canada, further he was renovated his family home in Portugal. He never has acquired a domicile in Canada, when he was working here he used to live with a friend. He never bought any furniture here except a television and he bought clothes.

Wadsworth v. McCord (1886), 12 S.C.R. 466; Patel, Mahendrakumar Haribhai v. M.E.I. (I.A.B. 78-9163), Weselak, Benedetti, Petrie, January 9, 1979 (See CLIC, No. 5.18, August 3, 1979); Alexander, Magdi Halim v. M.E.I. (I.A.B. 78-9138), Weselak, Petrie, Teitelbaum, July 18, 1978 (See CLIC, No. 2.4, April 25, 1979); Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979); Lourenco, Joao Evangelista v. M.E.I. (I.A.B. 78-9142), Weselak, Benedetti, Teitelbaum, October 18, 1978 (See CLIC, No. 3.5, June 27, 1979).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, January 23, 1980 **Judgment pronounced:** February 12, 1980 **Reasons by:** R. Tremblay (in French; 6 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1096 **Counsel:** P. Duquette, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.



CAI  
M.I. 81  
- 152

# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 16

Date June 23, 1980

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



AS OF THIS ISSUE, ONLY THOSE DECISIONS SELECTED  
BY THE BOARD WILL BE PUBLISHED

SPONSORSHIPS

16.1	79-9203	Lam, Kin Keung Paul v. Minister of Employment and Immigration
16.2	79-9265	Gordon, Daphne Elaine v. Minister of Employment and Immigration
16.3	79-9213	Choi, Josephine Lai-Kuen v. Minister of Employment and Immigration

REFUGEES

16.4	79-1121	Ashrafi, Mohammad Shamsuddin
16.5	79-1189	Nawaz, Dil
16.6	79-9436	Azraq, Mohammed
16.7	79-1228	Dardarian, Hagop Boghos
	79-1229	Dardarian, Anik Krikor
	79-1230	Dardarian, Setta
16.8	79-9094	Silva, Carlos Humberto Otarola v. Minister of Employment and Immigration
16.9	80-9022	Abu-Taah, Mohamed
16.10	79-9463	Altoon, Thamir Jamil
16.11	79-6224	Doumbe, André v. Minister of Employment and Immigration
16.12	80-9028	Burgos, Eugenia Magali Flores

REMOVAL ORDERS

16.13	79-1084	Carvalho, Manuel Da Cruz v. Minister of Employment and Immigration
16.14	79-6047	Selby, Brendan Leeson v. Minister of Employment and Immigration

JURISDICTION OF BOARD

16.11	79-6224	Doumbe, André v. Minister of Employment and Immigration
16.14	79-6047	Selby, Brendan Leeson v. Minister of Employment and Immigration

MOTION

16.15	79-9213	Minister of Employment and Immigration v. Choi, Josephine Lai-Kuen
-------	---------	--

JURISDICTION OF BOARD TO HEAR THE APPEAL

16.15	79-9213	Minister of Employment and Immigration v. Choi, Josephine Lai-Kuen
-------	---------	--

NOTE

RE: Veronica Maria Rodriguez De Villarreal v. Minister of Employment and Immigration  
CLIC 15.19, May 28, 1980.

The sentence should be read as:

**Held:** Application having been allowed to proceed, the applicant is determined to be a Convention refugee.

16.1

Kin Keung Paul Lam v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE WOULD BE A PUBLIC CHARGE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 19(1)(a), (2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant filed an application to sponsor the application for landing in Canada of his parents and of his three sisters. The application was refused in respect of one sister in that she is suffering from a health impairment that would cause excessive demands on health or social services if she were admitted.

**Held:** Appeal allowed on equitable grounds. One of the objectives of the Canadian Immigration Policy is to facilitate the reunification of the families. The disease affecting the sponsoree is not communicable, requires medical care and possibly hospitalization and there is no surveillance required. The apparent cost of treating this disease in remission appears to be fairly reasonable and she can be referred to a competent specialist for treatment as an out-patient.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, October 2, 1979 **Judgment pronounced:** October 2, 1979 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9203 **Counsel:** F. Kan, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

16.2

Daphne Elaine Gordon v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE DEPORTED FROM CANADA - CONSENT OF MINISTER TO RETURN - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 19(1)(i), 79

The appellant filed an application to sponsor the application for landing in Canada of her husband which application was refused on the grounds that he has failed to establish his sincere intention in respect to the proposed sponsorship and that he had been deported from Canada and had not obtained the consent of the Minister to return.

**Held:** Appeal allowed on equitable grounds. The Board was not too impressed with the applicant's demeanour at the hearing. It perceived a somewhat antagonistic attitude. Nevertheless, she did establish that hers was a bona fide marriage.

U. Benedetti (dissenting)

I would dismiss the appeal with regard to the existence of compassionate or humanitarian considerations that warrant the granting of special relief. When the sponsor stated in Court that she married the sponsoree because of love, this alone, in my opinion is not sufficient reason for the sponsoree to be reunited with her in Canada. The sponsoree has shown a complete disregard for the Immigration law of our country, as evidenced by his actions; he has been detained for a period of four months on criminal charges; he has caused the Immigration Department to proceed with three inquiries and to effect three deportations at a considerable cost to the Canadian taxpayers.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti (Dissenting) and E. Teitelbaum **Case heard:** in Toronto, January 22, 1980 **Judgment pronounced:** January 22, 1980 **Reasons by:** E. Teitelbaum (in English; 4 pp.), concurred in by A.B. Weselak **Dissenting reasons by:** U. Benedetti (2 pp.) **Docket no.:** 79-9265 **Counsel:** P. Clyne, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

16.3 Josephine Lai-Kuen Choi v. Minister of Employment and Immigration

SPONSORSHIP - REASONS FOR REFUSAL MUST BE COMMUNICATED TO THE SPONSOR AND SPONSOREE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 41(1)

The appellant filed an application to sponsor the application for landing in Canada of her husband which application was refused on the ground that he did not comply with any of the conditions or requirements of the Act and Regulations.

**Held:** Appeal allowed on legal and equitable grounds. The refusal letter is not in accordance with the Immigration Act and Regulations thereunder and is therefore invalid. The section of the Act to which the letter of refusal refers is not a section which describes any prohibition which is included in the said Immigration Act or Regulations and, therefore, the refusal letter does not inform either the sponsor or the sponsoree of any prohibition regarding the applicant's admission.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, February 4, 1980 **Judgment pronounced:** February 4, 1980 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9213 **Counsel:** C.L. Rotenberg, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

16.4 Mohammad Shamsuddin Ashrafi

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - UNSATISFACTORY EXAMINATION UNDER OATH - PRESENCE OF COUNSEL - EXAMINATION - STATUTORY DECLARATION - REVIEW BY BOARD ON MERITS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant, a citizen of India, is claiming refugee status on the ground that being an active member of the Congress Party, in organizing meetings he was watched by the police, although he was never arrested or harassed.

**Held:** Application refused to proceed, the applicant is determined not to be a Convention refugee. He has not established a prima facie case that his fear of persecution for political opinion is well-founded; indeed even making every allowance for the exceedingly poor examination under oath, the facts outlined are such that the applicant's claim can only be described as completely frivolous.

Jiminez, Angel Enrique Tapia v. M.E.I. (F.C.A., no. A-585-78), Pratte, Urie, Kelly, March 23, 1979 (not yet reported); Fuentes Garcia, Rolando Vincente v. M.E.I. (F.C.A., no. A-123-79), Heald, Ryan, Kelly, July 26, 1979 (not yet reported).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** in Montreal, August 27, 1979 **Judgment pronounced:** October 12, 1979 **Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1121.

---

16.5 Dil Nawaz

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL PARTY - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 70

The applicant is claiming refugee status on the ground that he fears persecution if he would return to Pakistan because of his active membership in the People's Party, a party supporting Bhutto. After he left Pakistan on a ship he went into Greece, where he apparently claimed refugee status, but left Greece before receiving any decision. He testified that he did not make any claim to refugee status in other countries visited by his ship, namely Algeria and Germany.

**Held:** Application refused to proceed, the applicant is determined not to be a Convention refugee. Notwithstanding the change of government in Pakistan after his departure from that country, there is no evidence that he has a well-founded fear of persecution by reason of his political opinions. His total failure to claim refugee status anywhere, after the fall of Bhutto until he came to the attention of the Canadian Immigration authorities, casts doubt on his credibility.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** in Montreal, November 21, 1979 **Judgment pronounced:** November 21, 1979 **Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1189.

---

16.6

Mohammed Azraq

REFUGEE - REDETERMINATION - FEAR PERSECUTION FOR REASONS OF RELIGION, RACE, NATIONALITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that he fears persecution for reasons of religion in that he was not able to practice his Moslem faith in a meaningful way. The Israeli authorities prevented him from attending religious services. He claims he was several times arrested, detained and tortured.

**Held:** Application refused to proceed. The applicant is determined not to be a Convention refugee. He might be discriminated against being a Palestinian forced to live in Israel. However, there is no evidence that he was singled out to be persecuted by Israeli authorities, and that he has a well-founded fear of persecution.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, January 9, 1980 **Judgment pronounced:** January 9, 1980 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by U. Benedetti and D. Davey **Docket no.:** 79-9436.

---

16.7

Hagop Boghos Dardarian  
Anik Krikor Dardarian  
Setta Dardarian

REFUGEE - REDETERMINATION - STATELESS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 45, 70, 71

The applicants are claiming refugee status on the ground that being of Armenian descent and being born in Lebanon they could not have the citizenship of that country.

**Held:** Applications refused to proceed, the applicants are determined not to be Convention refugees. It is common knowledge that the Armenians are persecuted in the Middle East, but there is no evidence that the applicants were ever persecuted because of their race, their nationality or their religion. They were victims of the civil war but they were not worse off than others living in the same part of the world.

Meghdessian, Zohrab Khoren v. M.E.I. (I.A.B. 79-1204), Scott, Houle, Tremblay, November 21, 1979 (See CLIC, No. 14.12, April 24, 1980).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
in Montreal, January 9, 1980 **Judgment pronounced:** January 9, 1980 **Reasons by:**  
G. Loiselle (in French; 8 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket**  
**no.:** 79-1228.

**Reasons by:** J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loiselle  
**Docket no.:** 79-1229.

**Reasons by:** J.-P. Houle (in French; 5 pp.), concurred in by R. Tremblay and G. Loiselle  
**Docket no.:** 79-1230.

---

16.8 Carlos Humberto Otarola Silva v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that being an active member of the Communist Party in Chile he was, after the coup, arrested, detained for several days and tortured. When he was released he went into hiding and escaped to Argentina where he lived for two years. When there was the military coup in Argentina, he was again arrested and physically abused.

**Held:** Application being allowed to proceed, the applicant is determined not to be a Convention refugee. Considering the evidence as a whole, the Board has an opportunity for two days to observe the applicant on the witness stand, he rarely gave straightforward answers, he was evasive most of the time and could not remember certain facts if it served his purpose. He failed "to establish the credibility and plausibility of the fear which he possessed and to answer all questions frankly", which was his responsibility to do at the hearing of his application for redetermination.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in  
Toronto, January 8 and 9, 1980 **Judgment pronounced:** January 10, 1980 **Reasons by:**  
F. Glogowski (in English; 9 pp.), concurred in by U. Benedetti and D. Davey **Docket**  
**no.:** 79-9094 **Counsel:** M. Adamache, Barrister and Solicitor, for the applicant;  
D. Taylor, Esq., for the respondent.

---

16.9 Mohamed Abu-Taah

REFUGEE - REDETERMINATION - FEAR PERSECUTION FOR REASONS OF RELIGION, RACE AND  
NATIONALITY - MEMBERSHIP IN A SOCIAL GROUP AND POLITICAL OPINION - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant is claiming refugee status on the ground that he fears persecution for reasons of race, religion, nationality being a Palestinian Arab of the Moslem faith living in Israel. He also fears persecution for membership in a social group and for political opinion. He claims that he was not able to practice his religion freely in Israel, he was often arrested and detained by the authorities for searching and questioning.

**Held:** Application refused to proceed. The applicant is determined not to be a Convention refugee. He might be discriminated against being a Palestinian forced to live, because of the political situation in Israel. However, there is no evidence that he was singled out to be persecuted by Israeli authorities, and that he has a well-founded fear of persecution.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:**  
in Toronto, January 16, 1980 **Judgment pronounced:** January 16, 1980 **Reasons by:**  
F. Glogowski (in English; 6 pp.), concurred in by U. Benedetti and R. Tremblay **Docket**  
**no.:** 80-9022.

---

16.10

Thamir Jamil Altoon

REFUGEE - REDETERMINATION - FEAR PERSECUTION BY REASON OF RELIGION, NATIONALITY AND  
POLITICAL OPINIONS - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.  
45(1), 70

The applicant, a citizen of Iraq, is claiming refugee status on the ground that he fears persecution by reason of his religion, nationality and political opinions. With respect to his religion, he claims that as a Christian he has difficulty in obtaining employment because the jobs available were given to Muslims.

**Held:** Application refused to proceed, the applicant is determined not to be a Convention refugee. The applicant never brought any valuable proof to support his claim to be a refugee. The evidence indicates that he may have been discriminated against in Iraq by reason of his religion, but there is no indication in the record that he was ever persecuted physically or otherwise. It is clear from the evidence that the applicant wanted to use Canada as a stepping-stone to the United States where he wished to live with his uncle who resides in the State of Michigan. Furthermore, before he left Iraq he applied for a visitor's visa to the United States which was refused. He then decided to come to Canada as a visitor.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and U. Benedetti **Case heard:**  
in Toronto, January 16, 1980 **Judgment pronounced:** January 16, 1980 **Reasons by:**  
R. Tremblay (in English; 4 pp.), concurred in by F. Glogowski and U. Benedetti **Docket**  
**no.:** 79-9463.

---

16.11

André Doumbé v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE OF ASSOCIATION WITH POLITICAL  
PEOPLE - CREDIBILITY

JURISDICTION OF BOARD - WHETHER APPLICATION FOR REDETERMINATION WITHIN TIME LIMIT

The applicant, a citizen of Cameroon, is claiming refugee status on the ground that he fears persecution because of his association with the Union Populaire Cameroon people in Ghana.

Before the Board could determine if it shall allow the application to proceed, a hearing was set to decide whether the Board had jurisdiction. From the record the application for redetermination was received at the Board a month after the refusal letter of the Minister was signed. The counsel of the respondent produced a postal receipt showing the letter to have been mailed on such a date and to have been picked up four days later. It is signed the name of the applicant. An examination of the signed application shows clearly the signature on the postal receipt not to be the signature of the applicant. He denies having picked up the letter and denies arranging for another to do so.

**Held:** The Board accepted jurisdiction, the applicant did all within his power to meet the requirements of the Immigration Commission.

**Held:** Application refused to proceed, the applicant is determined not to be a Convention refugee. There is no evidence to justify the fears he has expressed and without anything more, the Board must conclude they are without foundation.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and D. Davey **Case heard:** in Vancouver, January 14, 1980 **Judgment pronounced:** January 16, 1980 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 79-6224 **Counsel:** F.N. Moon, Esq., for the applicant; D.M. Hanbury, Esq., for the respondent.

---

16.12

Eugenia Magali Flores Burgos

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Chile, is claiming refugee status on the ground that because she was a member of the Socialist Party she was refused re-entry to the University, the next year she was detained for one night and had to report to the police station once a week. She claims that her uncle who had a high position in the Party was detained for a period of three months. He statutory declaration added nothing to the evidence given at her examination under oath.

**Held:** Application refused to proceed and the applicant is determined not to be a Convention refugee. Considering that the only evidence available to the Board that is the Declaration and the examination under oath, the applicant did not adduce evidence that she has a "well-founded fear of persecution".

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, January 23, 1980 **Judgment pronounced:** January 23, 1980 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 80-9028.

---

16.13

Manuel Da Cruz Carvalho v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - WHETHER THE ADJUDICATOR ERRED IN HIS DEPORTATION ORDER PURSUANT TO THE IMMIGRATION ACT, 1976 - TRANSITIONAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 32(2), 72 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e)(viii), 25 - INTERPRETATION ACT, R.S.C. 1970, C. I-23, S. 35

The appellant, a permanent resident, was ordered deported under the Immigration Act, 1976 on the ground that he had made false representations on a material fact upon his admission to Canada. The appellant's counsel argued that he should have been ordered deported under the Immigration Act, 1952 since the allegations were made before the entry into force of the Immigration Act, 1976.

**Held:** Appeal dismissed. The adjudicator did not err in law in making his order of deportation pursuant to section 27(1)(e) of the Immigration Act, 1976, he did not have any other choice. There was never an inquiry nor a decision held before the entry into force of the Immigration Act, 1976, therefore, there was no violation before the proclamation of the Act and section 35(d) of the Interpretation Act cannot be applied.

McDoom v. M.E.I. [1978] 1 F.C. 323; 77 D.L.R. (3d) 559.

**Coram:** J.P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, December 5, 1979 **Judgment pronounced:** January 8, 1980 **Reasons by:** J.-P. Houle (in French; 6 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1084 **Counsel:** S. Moreau, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

16.14

Brendan Leeson Selby v. Minister of Employment and Immigration

JURISDICTION OF BOARD - ADJUDICATOR FINDING PERSON NOT PERMANENT RESIDENT - REVIEW BY BOARD OF THE DECISION OF THE ADJUDICATOR

REMOVAL ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE OF CANADA FOR MORE THAN 183 DAYS - NO RETURNING RESIDENT PERMIT - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN SECTION 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 4(1), 9(1), 32(5)(b), 72, 75(1)(a), 76(1)

The appellant was landed on his first arrival in Canada. He married in Canada and then travelled with his wife to Germany as his wife wanted to complete her teacher's education in that country. His primary intention in going to Germany was to stay there for two years only but in fact they lived there for about five years. He came back in Canada for a month, returned to Germany to get his wife and entered again Canada without a returning resident permit.

**Held:** Appeal allowed on legal grounds, exclusion order quashed. The appellant was successful in convincing the Board that he had the intention to remain a resident of Canada at all times during his absence from his country.

Berger v. M.M.I. 11 I.A.C. 297/305; Fryer v. M.M.I. 5 I.A.C. 159/166; Georgoussis, Georgios v. M.M.I. (I.A.B. 75-10065), Benedetti, August 5, 1975 (not yet reported); Vlachos, Demetrios v. M.M.I. (I.A.B. 74-1037), Houle, Lord, Poupart, July 5, 1974 (not yet reported); Gill v. M.M.I. 2 I.A.C. 266/270; Tonner v. M.M.I. 6 I.A.C. 202/212; Inoue v. M.M.I. 11 I.A.C. 410/425; Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979), Alexander, Magdi Halim v. M.E.I. (I.A.B. 78-9138), Weselak, Petrie, Teitelbaum, July 18, 1978 (See CLIC, No. 2.4, April 25, 1979); Patel, Mahendrakumar Haribhai v. M.E.I. (I.A.B. 78-9163), Weselak, Benedetti, Petrie, January 9, 1979 (See CLIC, No. 5.18, August 3, 1979).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum in Vancouver, May 22, 1979  
**Judgment pronounced:** May 24, 1979  
**Reasons by:** F. Glogowski (in English; 8 pp.), concurred in by C.M. Campbell and E. Teitelbaum  
**Docket no.:** 79-6047  
**Counsel:** R. Holloway, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

16.15

Minister of Employment and Immigration v. Josephine Lai-Kuen Choi

MOTIONS - BOARD'S JURISDICTION TO HEAR THE APPEAL - SPONSOR HAD NOT BEEN INFORMED OF THE REFUSAL OF THE APPLICATION AND OF THE REASONS FOR THE REFUSAL - SPONSOR SHALL BE ADVISED OF HER RIGHT OF APPEAL AND OF THE TIME TO FILE HER APPEAL

JURISDICTION OF BOARD TO HEAR THE APPEAL - MOTIONS - SPONSOR HAD NOT BEEN INFORMED OF THE REFUSAL OF THE APPLICATION AND OF THE REASONS FOR THE REFUSAL - SPONSOR SHALL BE ADVISED OF HER RIGHT OF APPEAL AND OF THE TIME TO FILE HER APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 41(2) - IMMIGRATION APPEAL BOARD RULES, 1978, RULES 4(2), 17 - IMMIGRATION INQUIRIES REGULATIONS, (REPEALED), S. 12

The applicant, the Minister, filed first a motion contesting the jurisdiction of the Board to hear the appeal on the ground that there had been no refusal to approve the application for landing as the sponsor had not been informed of the refusal of the application and of the reasons for the refusal. The Board reached the decision that the letter addressed to the sponsoree setting out the refusal when redelivered to the sponsor informed properly the sponsor of the fact of the refusal.

There was a further motion by the Minister challenging the Board's jurisdiction, on the ground that the Notice of appeal was not served within the 30 days as required by the rule of the Immigration Appeal Board Rules, 1978. There were no evidence before the Board that the respondent was ever advised of her right of appeal nor that she was advised that she had to file her appeal within a period of 30 days from the date of refusal.

Held: Motion dismissed, the Board has jurisdiction to hear the appeal. In the instant case, there is no evidence to show that the respondent was ever advised of the right of appeal or the procedure in instituting an appeal, either orally or in writing. If the respondent (sponsor) has been properly advised by the Immigration Office of her right of appeal it may be that being aware of the time limitation, she may have seen to it that the Notice of appeal was served within the time limit. It would be a denial of natural justice not to accept jurisdiction in this case.

Radic, Mirko v. M.M.I (I.A.B. 70-1558), Scott, Campbell, Byrne, October 23, 1970 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey Case heard: in Toronto, October 1, 1979 Judgment pronounced: October 1, 1979 Reasons by: A.B. Weselak (in English; 6 pp.), concurred in by U. Benedetti and D. Davey Docket no.: 79-9213 Counsel: M. Prue, Esq., for the applicant; C. Hoppe, Barrister and Solicitor, for the respondent.

---

ISSN 0225-1620

LAG





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9756

No. 17

Date July 21, 1980



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

17.1	79-9446	Janmohamed, Zulfikar-Ali v. Minister of Employment and Immigration
17.2	79-6144	Adams, Veronica Theresa v. Minister of Employment and Immigration
17.3	79-6160	Mahedi, Zaitun Moez v. Minister of Employment and Immigration
17.4	79-9360	Skalski, Tadeusz v. Minister of Employment and Immigration
17.5	78-6207	Bains, Mohan Singh v. Minister of Employment and Immigration
17.6	79-6135	Dhesi, Ranjit Kaur v. Minister of Employment and Immigration
17.7	78-1099	Ruiz, Cresencia Escalante v. Minister of Employment and Immigration

#### REFUGEES

17.8	79-1227	Gutierrez, Alberto Carlos
17.9	80-6033	Wahba, Tarek Mohamed Shafey
17.10	80-1023	Khodr, Ahmad Said v. Minister of Employment and Immigration

#### APPEAL BY MINISTER

17.11	79-6130	Minister of Employment and Immigration v. Hass, Manfred
-------	---------	---

#### EVIDENCE

17.6	79-6135	Dhesi, Ranjit Kaur v. Minister of Employment and Immigration
------	---------	--

#### JURISDICTION OF BOARD

17.7	78-1099	Ruiz, Cresencia Escalante v. Minister of Employment and Immigration
17.11	79-6130	Minister of Employment and Immigration v. Hass, Manfred

#### PERMADENT RESIDENT

17.11	79-6130	Minister of Employment and Immigration v. Hass, Manfred
-------	---------	---



17.1 Zulfikar-Ali Janmohamed v. Minister of Employment and Immigration

SPONSORSHIP - LETTER OF REFUSAL SHOULD COMMUNICATE TO THE SPONSOR AND TO THE SPONSOREE THE GROUNDS OF REFUSAL - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 41(1)

The appellant filed an application to sponsor the application for landing in Canada of his wife which application was refused. The letter of refusal does not contain a summary of the information on which the reason for refusal is based.

Held: Appeal allowed on legal and equitable grounds. The letter of refusal did not contain information on which the reason for refusal was based and therefore the Board finds that the letter of refusal has not been made in accordance with the Immigration Act and Regulations thereunder and is therefore invalid. Considering the evidence as a whole, the Board is also reasonably satisfied that this is a bona fide marriage relationship and that in this case special relief is warranted.

Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: in Toronto, January 31, 1980 Judgment pronounced: January 31, 1980 Reasons by: A.B. Weselak (in English; 4 pp.), concurred in by U. Benedetti and E. Teitelbaum Docket no.: 79-9446 Counsel: M. Ben-Dat, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

17.2 Veronica Theresa Adams v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREES NOT MAINLY DEPENDENT ON THEIR MOTHER FOR SUPPORT - DEFINITION OF FAMILY - DEFINITION OF DEPENDANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 4, 6(1)

The appellant filed an application to sponsor the application for admission into Canada of her daughter and four sons which application was refused on the ground that they were not mainly dependent upon their mother for support as required within the interpretation of family pursuant to the Act.

Held: Appeal allowed on legal grounds. The five children she is sponsoring fall clearly within the family class. The appellant produced abundant evidence in the form of family communications, telephone bills, Air Canada freight bills and passenger receipts to convince the Board she has maintained a family relationship and continuous support for her common-law husband and their children.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and E. Teitelbaum Case heard: in Winnipeg, February 6, 1980 Judgment pronounced: February 6, 1980 Reasons by: C.M. Campbell (in English; 4 pp.), concurred in by F. Glogowski and E. Teitelbaum Docket no.: 79-6144 Counsel: T. Gutkin, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

17.3 Zaitun Moez Mahedi v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE SPONSOREE - WHICH DATE SHALL BE CONSIDERED, THE TIME OF APPLICATION FOR LANDING MADE BY THE SPONSOREE OR THE TIME OF THE SPONSORSHIP APPLICATION MADE BY THE SPONSOR? - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79



The appellant filed an application to sponsor the application for landing in Canada of her parents and of her brother. The application was refused in respect of the brother on the ground that he was over twenty-one at the time he made his application for landing. The counsel of the appellant submitted that he was under twenty-one at the time the sponsorship application was made and that date should be the one considered to deal with the refusal.

**Held:** Appeal dismissed. The Board agreed with the submission of the respondent's counsel that under the new legislation the right of appeal arises not from a refusal of an application to sponsor, but from a refusal of an application for landing which is sponsored.

Sleiman, Roxanne Madeline v. M.E.I. (I.A.B. 78-6209), Campbell, Glogowski, Tremblay, February 26, 1979 (See CLIC, No. 6.18, August 24, 1979); Dhaliwal, Charajit Kaur v. M.E.I. (I.A.B. 79-3024), Scott, Glogowski, Teitelbaum, December 12, 1979 (not yet reported).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti **Case heard:** in Vancouver, February 11, 1980 **Judgment pronounced:** February 12, 1980 **Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by C.M. Campbell and U. Benedetti **Docket no.:** 79-6160 **Counsel:** F. Sadaruddin, Esq., for the appellant, C.J. Dickey, Esq., for the respondent.

---

17.4 Tadeusz Skalski v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR NOT ADVISED OF REASONS FOR REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79

The appellant filed an application to sponsor the application for landing in Canada of his wife. The refusal was based on the general terms of the Immigration Act, simply stating that the sponsoree "was unable to meet the requirements" of the Act.

**Held:** Appeal allowed on legal grounds. The letter of refusal to the sponsor has not complied with the requirements that he be informed of the reasons for refusal.

Sleiman, Roxanne Madeline v. M.E.I. (I.A.B. 78-6209), Davey, Campbell, Teitelbaum, February 26, 1979 (See CLIC, No. 6.18, August 24, 1979), Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Houle, Glogowski, Tremblay, February 7, 1979 (See CLIC, No. 4.13, June 29, 1979); Wotypka, Joseph Frank v. M.E.I. (I.A.B. 79-6007), Campbell, Glogowski, Davey, July 17, 1979 (See CLIC, No. 9.7, November 26, 1979).

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** in Toronto, January 14, 1980 **Judgment pronounced:** February 13, 1980 **Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9360 **Counsel:** M. Green, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

17.5 Mohan Singh Bains v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE SPONSOREE - TWO LETTERS OF REFUSAL - FIRST LETTER UNDER THE IMMIGRATION ACT, 1976 - SECOND LETTER UNDER THE IMMIGRATION ACT, 1952 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 6(1)(a), 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 5(t), 36 - IMMIGRATION REGULATIONS, PART I, S. 28(1)



The appellant filed an application to sponsor the application for landing in Canada of his father, mother and brother. The application was refused in respect of the brother in that he did not established satisfactorily that he was under twenty-one years of age. There was two letters of refusal. The first one refers to the Immigration Act, 1976 and the second one to make the person more aware of the reasons for the refusal written under the Immigration Act, 1952. The appellant argued that the second letter should be taken into consideration for the refusal and it should be declared null because it refers to the Immigration Act, 1952, and therefore the appeal would be allowed. The Board ruled on the bench and decided that the first letter of refusal would prevail and was a valid refusal letter. On the issue to be resolved, the age of the brother, the record did not show hard evidence of his date of birth.

**Held:** Appeal dismissed. The conflict in the secondary evidence is such that the Board has determined the preponderance of this evidence to indicate that he is over twenty-one. He is therefore not a member of the family class and special relief is not available in his case.

F. Glogowski (Dissenting)

Having read the reasons written by my learned colleague, Vice-Chairman C.M. Campbell, and after careful perusal of both letters of refusal, I come to the conclusion that I erred voicing my dissension at the hearing of this appeal from the decision of the majority of the Board. It is obvious that the appeal was made on December 12, 1978 only from the decision of the Commission, as outlined in the letter of refusal dated November 23, 1978; and the grounds given in this letter were in accordance with the law. Although I am still of the opinion that the second letter dated January 17, 1979 is a nullity, I have no alternative but to agree with the majority's opinion that it was "extraneous to these proceedings" and therefore it has no bearing in this appeal.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and F. Glogowski (Dissenting)  
**Case heard:** in Vancouver, February 13, 1980      **Judgment pronounced:** February 13, 1980  
**Reasons by:** C.M. Campbell (in English; 6 pp.), concurred in by U. Benedetti  
**Dissenting reasons by:** F. Glogowski (1 p.)      **Docket no.:** 78-6207      **Counsel:**  
R.O. Rothe, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

17.6      Ranjit Kaur Dhesi v. Minister of Employment and Immigration

**SPONSORSHIP - ONE SPONSOREE NOT TRUTHFUL IN HIS ANSWERS - AGE AND RELATIONSHIP OF OTHER SPONSOREE - EVIDENCE - ABSENCE OF REGISTRATION OF BIRTH CERTIFICATES**

**EVIDENCE - ABSENCE OF REGISTRATION OF BIRTH CERTIFICATES - SPONSORSHIP - ONE SPONSOREE NOT TRUTHFUL IN HIS ANSWERS - AGE AND RELATIONSHIP OF OTHER SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79**

The appellant filed an application to sponsor the application for admission into Canada of her parents, her brothers and her sister. The application was refused in respect of the father on the ground that he had failed to answer truthfully all questions put to him by the visa officer and in respect of one of the brothers in that he did not give satisfactory evidence that he was under 21 years of age. The record showed that applications for birth certificates were made for some of the sponsorees but all these certificates showed that no entry of birth was traceable. It even showed that there was no entry of birth made for the appellant. At the hearing, pictures of the sponsor's family and relatives were introduced. School certificates were also introduced to prove the age school attendance and relationship. There was also the testimonies of a very close friend of the family, and of a sister of the sponsor's mother.

**Held:** Appeal allowed on legal grounds in respect of the parents, of two brothers and of the sister of the appellant. The Board is of the opinion that it is dealing with one family and will accept, in this particular case, the ages of the children as per the school certificates filed as their births were never registered.

Appeal dismissed in respect of one brother of the appellant in that he was over 21 years of age at the time his application was filed, and therefore does not fall within the sponsorable family class.



Coram: C.M. Campbell (Vice-Chairman), U. Benedetti and F. Glogowski Case heard:  
in Vancouver, February 14, 1980 Judgment pronounced: February 15, 1980 Reasons  
by: U. Benedetti (in English; 3 pp.), concurred in by C.M. Campbell and F. Glogowski  
Docket no.: 79-6135 Counsel: A.K. Bhullar, Barrister and Solicitor, for the  
appellant; D.M. Hanbury, Esq., for the respondent.

---

17.7 Cresencia Escalante Ruiz v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - TEMPORARY  
ADMISSION OF SPONSOREE SOUGHT

JURISDICTION OF BOARD - STATUS - SPONSOREE TO BE ADMITTED FOR A TEMPORARY PURPOSE -  
IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79 - IMMIGRATION APPEAL  
BOARD RULES, 1978, RULE 17

The appellant filed an application to sponsor the application for admission into Canada  
of her father which application was refused on the ground that he would cause excessive  
demands on health or social services. The Department said that the application could be  
reconsidered in one year's time after he has successfully completed appropriate medical  
treatment. At the hearing, the appellant stated that she did not want to pursue any  
more her sponsorship but rather she wanted to sponsor an application for temporary  
status, status of visitor.

Held: Appeal dismissed on legal grounds. The following guideline is added: with the  
very much considerate assistance from counsel for the respondent, the appellant was told  
that she was in no way barred from making, in the usual manner, a sponsorship of an  
application for temporary status.

Pean, Marie Thérèse v. M.E.I. (I.A.B. 79-1002), Houle, Tremblay, Loiselle, August 24,  
1979 (See CLIC, No. 11.4, January 25, 1980).

Coram: J.-P. Houle (Vice-Chairman), F. Glogowski and R. Tremblay Case heard: in  
Montreal, March 25, 1980 Judgment pronounced: March 25, 1980 Reasons by:  
J.-P. Houle (in English; 4 pp.), concurred in by F. Glogowski and R. Tremblay Docket  
no.: 78-1099 Counsel: M.A. Kulba, Esq., for the respondent.

---

17.8 Alberto Carlos Gutierrez

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION  
ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71(1)

The applicant, a citizen of Nicaragua, is claiming refugee status on the ground that  
because he was an active member of a political group, the Sandinist Front for national  
liberation, he was threatened, arrested and detained after having expressed his  
political opinions.

Held: Application refused to proceed, the applicant is determined not to be a  
Convention refugee. The authorities "en place" now in Nicaragua, are those for which  
the applicant was a firm supporter in his political activities. He claims that this  
present regime is of the same political opinion as the previous one. There was no  
evidence that he or his family are persecuted by the regime "en place", and there is  
evidence that his family is still the owner of a large industry for pharmaceutical  
products.

Inzunza Orellana, Ricardo Andres v. M.E.I. (F.C.A., no. A-9-79), Heald, Ryan, Kelly,  
July 25, 1979 (not yet reported).



Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in  
Montreal, January 9, 1980 Judgment pronounced: January 9, 1980 Reasons by:  
J.-P. Houle (in French; 6 pp.), concurred in by R. Tremblay and G. Loiselle Docket  
no.: 79-1227.

---

17.9

Tarek Mohamed Shafey Wahba

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - FEAR PERSECUTION BY REASON OF  
RACE, RELIGION AND SOCIAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C.  
52, SS. 2, 70, 71

The applicant, a citizen of Egypt, is claiming refugee status on the ground that he was  
victim of multiple harassments such as constant surveillance as a result of an active  
membership in a Moslem student group in Egypt. The examination under oath shows that  
when he left Egypt he travelled to Holland, Mexico and Canada. He was admitted in  
Canada as a tourist, he did not claimed refugee status upon arrival. He travelled all  
the way to Canada with a passport issued by his native country.

Held: Application refused to proceed and the applicant is determined not to be a  
Convention refugee. The applicant had no problem in having a passport issued to him in  
his native country and he used this passport in his travel to Holland, Mexico and  
Canada. When he lost this passport, he reported this fact to the Egyptian Embassy in  
Ottawa. His action in this respect would indicate that he was not unwilling to avail  
himself of the protection of his country. He never sought refugee status while he was  
in Holland or Mexico. He apparently decide to be a refugee only after his visitor's  
status expired in Canada and he was told to leave.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti Case heard: in  
Vancouver, February 14, 1980 Judgment pronounced: February 14, 1980 Reasons by:  
F. Glogowski (in English; 8 pp.), concurred in by C.M. Campbell and U. Benedetti  
Docket no.: 80-6033.

---

17.10

Ahmad Said Khodr v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - NO EVIDENCE THAT APPLICANT NOT REPRESENTED BY COUNSEL AT  
EXAMINATION UNDER OATH - NO EVIDENCE THAT APPLICANT WAS INFORMED OF HIS RIGHT TO OBTAIN  
COUNSEL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45, 70

The applicant was subject of an examination under oath, claimed refugee status, was  
refused and applied for redetermination of his claim to the Board. In examining the  
examination under oath, the Board found that there was no evidence that the applicant  
was represented by counsel at that examination nor was he informed of his right to  
obtain the services of counsel as required by section 45(6) of the Act.

Held: The Minister was ordered to cause another examination under oath to be properly  
conducted and to proceed with the matter in accordance with section 45 of the Act, the  
whole as expeditiously as possible. The applicant has to be informed of his right to  
counsel, this is a mandatory provision. It is not administrative but substantive; it  
deals with a fundamental right. Failure to comply with it nullifies the whole of the  
proceedings; the examination is a nullity as is everything that flows from it including  
the Minister's refusal and the Board cannot deal with the matter on its merits.

Neverette, Emilio Alejandro v. M.E.I. (I.A.B. 78-1104), Houle, Glogowski, Tremblay,  
February 15, 1979 (See CLIC, No. 6.12, August 24, 1979).



Coram: J.V. Scott (Chairman), R. Tremblay and G. Loiselle      Case heard: in Montreal,  
March 24, 1980      Judgment pronounced: March 24, 1980      Reasons by: J.V. Scott (in  
English; 3 pp.), concurred in by R. Tremblay and G. Loiselle      Docket no.: 80-1023.

17.11

Minister of Employment and Immigration v. Manfred Hass

APPEAL BY MINISTER - DID THE ADJUDICATOR ERR IN FINDING THE RESPONDENT A PERMANENT RESIDENT? - DID THE ADJUDICATOR ERR IN NOT PRONOUNCING A REMOVAL ORDER AGAINST THE RESPONDENT?

JURISDICTION OF BOARD - ADJUDICATOR FINDING PERSON TO BE A PERMANENT RESIDENT - REVIEW BY BOARD OF THE DECISION OF THE ADJUDICATOR

PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE OF CANADA FOR MORE THAN 183 DAYS - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN SECTION 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 24(1), (2), 27(2)(b), (2)(e), 73 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 31(4) - CITIZENSHIP ACT, S.C. 1974-75-76, C. 108, S. 5(1)(b)

The appellant, the Minister of Employment and Immigration is appealing from a decision of an adjudicator on the grounds that he erred in not holding that the respondent had ceased to be a permanent resident, that he had engaged and continued in employment in Canada contrary to the Act or Regulations and that he had entered Canada as a visitor and remained therein after ceasing to be a visitor. He also submitted that the adjudicator erred in not making an order for the removal of the respondent.

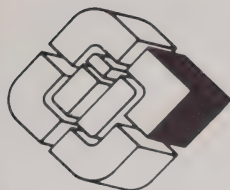
The appellant, a citizen of Germany, upon arrival in Canada was granted landed immigrant status. He stayed in Canada for about three months and returned to his country of origin for personal reasons, his mother was sick. He remained in Germany just under twelve years due to his mother's continuing illness. He returned to Canada after his mother's death and his passport contained a Canadian Immigration Visitor's stamp. He swore that he did not notice this until he arrived at his hotel and apparently he did not take it seriously since his Canadian Immigration Record Card was in his passport and he always considered himself to be coming back to Canada as a returning resident. The whole case turns on the question whether the respondent was or was not a permanent resident when he came back in Canada.

Held: Appeal dismissed. The Board agreed with the finding of the learned adjudicator in that the respondent was a permanent resident when he returned to Canada. It must be emphasized that this is a "borderline" case, the learned adjudicator, before whom the respondent personally appeared, found him to be a credible witness and this Court has resolved in his favour certain doubts arising from discrepancies in his testimony and submissions.

Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979); Adams, Janice May v. M.E.I. (I.A.B. 78-9455), Weselak, Benedetti, Petrie, October 3, 1978 (See CLIC, No. 3.14, June 27, 1979); Alexander, Magdi Halim v. M.E.I. (I.A.B. 78-9138), Weselak, Petrie, Teitelbaum, July 18, 1978 (See CLIC, No. 2.4, April 25, 1979); Goncalves, Laurinda Rodrigues v. M.M.I. (I.A.B. 74-10411), Glogowski, Russell, Poworoznyk, August 13, 1975 (not yet reported); Re Stafford (1979) 97 D.L.R. (3d) 499 (F.C.T.D.).

Coram: J.V. Scott (Chairman), C.M. Campbell and E. Teitelbaum      Case heard: in  
Vancouver, November 26, 1979      Judgment pronounced: February 6, 1980      Reasons by:  
J.V. Scott (in English; 10 pp.), concurred in by C.M. Campbell and E. Teitelbaum  
Docket no.: 79-6130      Counsel: D.M. Hanbury, Esq., for the appellant.



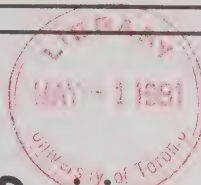


# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 18

Date September 19, 1980

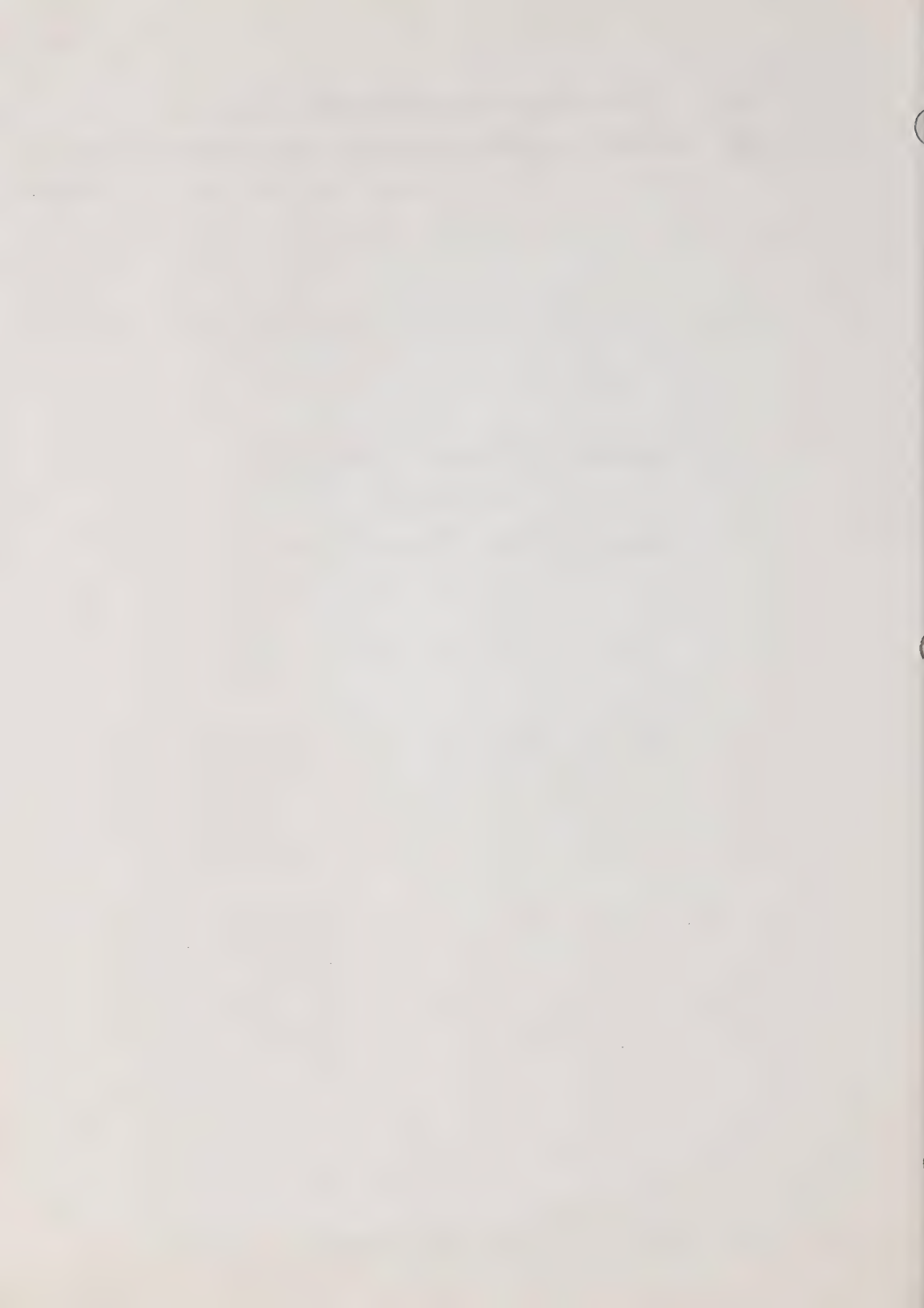


## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

18.1 79-6129 Chand, Ami v. Minister of Employment and Immigration  
18.2 79-9376 James, Albera Isonanda v. Minister of Employment and Immigration  
18.3 79-9327 Petrow, Emil v. Minister of Employment and Immigration  
18.4 79-1114 Beaubrun, Marie Lourdes v. Minister of Employment and Immigration  
18.5 79-6081 Dufe, Annie Lillian v. Minister of Employment and Immigration  
18.6 79-9419 Hill, Sedney Laverne St. John v. Minister of Employment and Immigration  
18.7 79-9176 Jawanda, Jagdip Singh v. Minister of Employment and Immigration  
18.8 79-9326 Dhother, Gurnek Singh v. Minister of Employment and Immigration

#### REFUGEES

18.9 79-1082 Bahamondes Peralta, Moise Danilo v. Minister of Employment and Immigration  
18.10 79-1220 Kwiatkowski, Jan Piotr  
18.11 80-6004 Lazo-Cruz, Jose Antonio  
18.12 79-9396 Drozd, Viatcheslav and  
79-9395 Drozd, Tatiana v. Minister of Employment and Immigration  
18.13 79-6125 Sleiman, Mohammed Said  
18.14 80-9123 Yilmaz, Nezihi and wife Yilmaz, Zuhail

#### REMOVAL ORDERS

18.15 79-6108 Rocuant, Manuel Alberto  
79-6109 wife Rocuant, Eliana de los Mercedes  
79-6110 and daughters Rocuant, Brisa Pamela,  
79-6111 Rocuant, Roxana Patricia and  
79-6112 Rocuant, Yasana Eliana v. Minister of Employment and Immigration  
18.16 79-9382 Kendarjian, Dikranohi v. Minister of Employment and Immigration  
18.17 79-6063 Perez-Pinto, Luz Maria v. Minister of Employment and Immigration  
18.18 79-9017 Gudino, Rogelio Astudillo v. Minister of Employment and Immigration

#### DEPORTATION ORDERS

18.19 79-6257 Crabtree, Robert Eastwood v. Minister of Employment and Immigration  
18.20 79-9467 Simpson, Raphael Anthony v. Minister of Employment and Immigration

#### EVIDENCE

18.6 79-9419 Hill, Sedney Laverne St. John v. Minister of Employment and Immigration  
18.8 79-9326 Dhother, Gurnek Singh v. Minister of Employment and Immigration

#### COUNSEL

18.14 80-9123 Yilmaz, Nezihi and wife Yilmaz, Zuhail

18.1

Ami Chand v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79**

The appellant filed an application to sponsor the application for admission into Canada of his mother and father. The application was refused in respect of the father on the ground that he had been convicted of a criminal offence, namely stealing a piece of cheese valued at two shillings and five pence (about fifty cents in Canadian money).

**Held:** Appeal allowed on equitable grounds. The sponsoree did not divulge at the interview the fact that he was convicted in 1964 for this petty offence. The majority of the Board does not condone his action in this respect. Nevertheless is the conviction for not paying for a piece of cheese valued at about fifty cents in 1964 such a big crime that should bar the father and mother of the appellant from joining their son and their grandchildren in Canada? The majority of the Board is of the opinion that section 79(2)(b) was inserted in the Act for the purpose that the Board could mitigate the severity of the law.

C.M. Campbell (dissenting)

In my view this Board is without statutory authority to allow the appeal on the grounds set forth by the majority. The majority expressed the opinion that Parliament inserted section 79(2)(b) to allow the Board to mitigate the severity of the law and proceed to grant special relief. It is common ground that the proposed immigrant is inadmissible pursuant to section 19(2)(a) of the Immigration Act, 1976, as set out in the letter of refusal. I find nothing in the Act or in the Immigration Regulations, 1978, that gives this Board the authority to allow an appeal on the basis of the degree of the disability from which inadmissibility pursuant to section 19(2)(a) flows.

**Coram:** C.M. Campbell (Vice-Chairman), (Dissenting), F. Glogowski and U. Benedetti  
**Case heard:** in Vancouver, February 12, 1980 **Judgment pronounced:** February 12, 1980  
**Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by U. Benedetti  
**Dissenting reasons by:** C.M. Campbell (in English; 5 pp.) **Docket no.:** 79-6129  
**Counsel:** R. McPhee, Student at Law, for the appellant; C.J. Dickey, Esq., for the respondent.

---

18.2

Albera Isomanda James v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE NOT WITHIN THE FAMILY CLASS - NOT A DEPENDENT UPON THE SPONSOR FOR SUPPORT - DEFINITION OF "FAMILY", OF "SON", OF "FAMILY CLASS" - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 6(1), 79 - IMMIGRATION REGULATIONS, 1978, SS. 4, 5, 6(2)**

The appellant filed an application to sponsor the application for landing of her son which application was refused on the ground that he was not admissible because he was not a member of the family class, he apparently was not mainly dependent upon her for support as required within the interpretation of the word "family".

**Held:** Appeal allowed on legal and on equitable grounds. The Act defines differently "family" and "member of the family class", and relates "member of the family class" to those members of a family whose application for landing may be sponsored by a Canadian citizen or by a permanent resident and therefore it would appear that this definition would apply to members of a family described in section 6 of the Immigration Regulations, 1978. In this definition there is no mention of dependency not is there any such mention in the provisions of section 6 of the Immigration Regulations, 1978 nor in the definition of "son" as provided in the said Regulations. In this case the son need not be dependent upon the sponsor in order to qualify within the provisions of section 6 of the Immigration Regulations, 1978 and that regardless if he is dependent or not, he is sponsorable.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum **Case heard:** in Toronto, February 18, 1980 **Judgment pronounced:** February 18, 1980 **Reasons by:** A.B. Weselak (in English; 5 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:** 79-9376 **Counsel:** C.C. Hoppe, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

18.3 Emil Petrow v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT IN POSSESSION OF A VALID VISA - CANADIAN MARRIAGE - VALIDITY MARRIAGE OF CONVENIENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 79

The appellant filed an application to sponsor into Canada the admission of his wife which application was refused on the ground that she was not in possession of a valid visa. She arrived in Canada as a visitor and before her visitor status expired she approached the Immigration authorities to request refugee status, but her claim was refused. In the meantime she met through her cousin an older Canadian citizen and got married. According to the evidence the couple never lived together, she continued to live with her cousin, because the husband, the sponsor, thought he did not have adequate accommodations for him and his wife. They testified that they spent some evening time together but the business hours of the restaurant that the sponsor had took a lot of their time. They now feel that they have accumulated sufficient funds to enable them to alter their mode of living. They have sold the restaurant and are in the process of renovating an apartment which they plan to share.

**Held:** Appeal allowed on equitable grounds. In the record there is a legal marriage certificate. By not living together seven days a week under one roof the couple did not conform to what is considered by society to be the norm. The majority opinion is that this unusual arrangement does not prove that the marriage is not genuine.

U. Benedetti (dissenting)

In reviewing all the evidence, I find that the marriage between the sponsor and the sponsoree is a marriage of convenience and I would dismiss the appeal. It seems very strange and unreal that this couple has not been able to share an apartment in over four years as financially the sponsor was able to afford one as he was working seven days per week.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and U. Benedetti (Dissenting) **Case heard:** in Toronto, February 19, 1980 **Judgment pronounced:** February 19, 1980 **Reasons by:** E. Teitelbaum (in English; 3 pp.), concurred in by A.B. Weselak **Dissenting reasons by:** U. Benedetti (in English; 3 pp.) **Docket no.:** 79-9327 **Counsel:** M. Drukarsh, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

18.4 Marie Lourdes Beaubrun v. Minister of Employment and Immigration

SPONSORSHIP - OBLIGATION OF FINANCIAL SUPPORT - DOUBTS ON FULFILMENT OF UNDERTAKING - WHETHER STATISTICS CANADA TAKES INTO CONSIDERATION THE NET INCOME ON THE GROSS INCOME TO ESTABLISH THE INCOME DISTRIBUTIONS BY SIZE IN CANADA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(iii)

The appellant filed an application to sponsor into Canada the admission of her mother which application was refused on the ground that she was not able to fulfil the undertaking to provide for lodging, care and maintenance. To analyse if the appellant would be able to fulfil her undertaking, the Immigration officer took into consideration the net income of the appellant and compared it with the necessary amount that is indicated in the "Income distributions by size in Canada" published by Statistics Canada. The appellant was not able to fulfil the undertaking if one considered the net income only, but was able to fulfil the undertaking if one considered the gross income.

The issue in the instant case was whether Statistics Canada was basing the revenue on the gross income or on the net income. There was an adjournment so that the appellant's counsel could write to Statistics Canada to find the answer to that important question.

**Held:** Appeal allowed on legal and equitable grounds. The answer from Statistics Canada was that Statistics Canada was taking into consideration the gross salary to establish the income distributions by size in Canada.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, February 22, 1980 **Judgment pronounced:** March 17, 1980 **Reasons by:** G. Loiselle (in French; 6 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1114 **Counsel:** P. Duquette, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

18.5 Annie Lillian Dufe v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - SPONSOREE MADE MISREPRESENTATION OF A MATERIAL FACT TO OBTAIN ADMISSION INTO CANADA - UNLAWFULLY IN POSSESSION OF A STOLEN BIRTH CERTIFICATE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 27(2)(d), (g), 79

The appellant filed an application to sponsor in Canada the admission of her husband, which application was refused on the grounds that he had been convicted of an offence under the Criminal Code; namely, possession of stolen property not exceeding \$200.00, and that he came into Canada by reason for fraudulent or improper means; that is, claiming to be a Canadian citizen being unlawfully in possession of a Birth Certificate of someone else.

The appellant informed the Board that this was her first marriage. However, her evidence indicates that this was the third marriage for her husband. He was convicted in Canada for having in his possession a stolen Birth Certificate and according to a statutory declaration made by an Immigration officer in Edmonton, was wanted in the United States for violation of parole.

**Held:** Appeal dismissed. There is no doubt that the appellant has deep affection for husband and that there exists a valid marriage relationship. However, the Board cannot treat lightly the way in which the sponsoree married the appellant in their first marriage and the manner in which he arrived in this country. The sponsoree has consistently lacked frankness both with Immigration authorities in Canada and the Justice authorities in the United States, where he apparently is still on the list of "fugitives from Justice" for violation of his parole.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti **Case heard:** in Edmonton, April 25, 1980 **Judgment pronounced:** April 25, 1980 **Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by C.M. Campbell and U. Benedetti **Docket no.:** 79-6081 **Counsel:** H.L. Starkman, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

18.6 Sedney Laverne St. John Hill v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - BIGAMY - EVIDENCE

EVIDENCE - BIGAMY - SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79 - CRIMINAL CODE, R.S.C. 1970, C. C-34, SS. 254(1)(a)(i), 255(1)

The appellant filed an application to sponsor into Canada the admission of her fiancé, which application was refused on the ground that he had been convicted of bigamy. At the hearing a Decree Absolute of divorce was produced. Also there was a declaration signed by the sponsoree in the presence of a Justice of the Peace certifying that the present name of the sponsoree and the name appearing on the Marriage Certificate was one and the same person.

**Held:** Appeal allowed on equitable grounds. It is clear from the evidence that it is a sincere relationship. The sponsoree's only encounter with the law took place back in 1975 and has been an isolated case - not of a criminal nature but due to the complicated events of an extra-marital affair.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, March 5 and May 26, 1980 **Judgment pronounced:** May 26, 1980 **Reasons by:** U. Benedetti (in English; 3 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 79-9419 **Counsel:** D. Taylor, Esq., for the respondent.

---

18.7 Jagdeep Singh Jawanda v. Minister of Employment and Immigration

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF THE ADOPTION - INDIAN CUSTOMARY ADOPTION - BURDEN OF PROOF - SPONSOREE WITHIN THE SPONSORABLE CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 4 - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, SS. 5, 7, 9, 10, 11, 16

The appellant filed an application to sponsor into Canada the admission of his adopted son which application was refused on the ground that he did not come within the definition of family class as described in the Immigration Regulations. At the hearing the appellant gave evidence to the effect that when the customary adoption of the sponsoree was made, there was a get-together in the community of three hundred people who witnessed the adoption when the child was eight years old.

**Held:** Appeal allowed on legal grounds. Having considered the provisions in the Hindu Adoptions and Maintenance Act, 1956, and having further considered the evidence, the Board is of the opinion that this adoption was not made in contravention of its provisions but rather was made in substantial compliance with the provisions and therefore would appear to be not a void adoption. The sponsoree was adopted at the age of eight years old and this would appear to be a valid adoption. However, there was no evidence produced before the Board by a qualified witness as to proof of the foreign law in India, therefore the Board cannot make a proper finding in this respect. Nevertheless, the Board has before it a Declaratory Decree which has not been contested as to its validity and which appears to be valid and issued by a Court of competent jurisdiction in India. Particularly based on this Decree the Board finds, as a fact, that the sponsoree was adopted before he attained the age of thirteen years.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum **Case heard:** in Toronto, April 24, 1980 **Judgment pronounced:** May 27, 1980 **Reasons by:** A.B. Weselak (in English; 7 pp.), concurred in by D. Davey and E. Teitelbaum **Docket no.:** 79-9176 **Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

18.8 Gurnek Singh Dhotter v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE, A MEMBER OF THE INADMISSIBLE CLASS - SPONSOR NOT FREE TO MARRY - EVIDENCE - PRODUCTION OF OFFICIAL DOCUMENTS

EVIDENCE - PRODUCTION OF OFFICIAL DOCUMENTS - SPONSORSHIP - SPONSOREE, A MEMBER OF AN INADMISSIBLE CLASS - SPONSOR NOT FREE TO MARRY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 4

The appellant filed an application to sponsor into Canada the admission of his wife and daughter. The application was refused in respect of his wife on the ground that she was a member of the inadmissible class in that she was not the lawful wife of the sponsor in that the latter would not have been free to marry at the time he married the sponsoree. At the hearing a Certificate of Marriage between the sponsor and a woman was produced. The appellant's counsel introduced a judgment by way of Decree Absolute in the Supreme Court of British Columbia between the same two persons. On the record is a Schedule showing that a marriage took place between the sponsor and the sponsoree after the date of the divorce at which time the appellant was legally divorced and free to re-marry.

**Held:** Appeal allowed on legal grounds. It is clear that the marriage is a legal marriage and that the sponsoree is the lawful wife of the appellant.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey **Case heard:** in Toronto, May 28, 1980 **Judgment pronounced:** May 28, 1980 **Reasons by:** U. Benedetti (in English; 2 pp.), concurred in by A.B. Weselak and D. Davey **Docket no.:** 79-9326 **Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

**18.9 Moise Danilo Bahamondes Peralta v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70(2), 71**

The applicant, a citizen of Chile, is claiming refugee status on the grounds that as an active member of different political groups, he was victim, after the coup in 1973, of several harassments. Apparently, he had to hide and leave his home. The militaries went to his house and asked his wife to tell where he was. She and the child were imprisoned and with the help of the United Nations she could leave Chile, and was accepted in Spain. He finally too could leave Chile for Argentina and then he went to Cuba. Because he could not obtain the proper papers, he could not leave Cuba to go to Spain. He was then admitted to Canada and left for Spain to meet his wife and daughter. He could not stay long in Spain because foreigners had to get out for economic reasons and he could not ask for refugee status in Spain. His wife and child could stay because they had a passport for the United Nations and they had the help of a Catholic organization.

**Held:** Application having been allowed to proceed, the applicant is determined to be a Convention refugee. "Persecution" is not only from physical torture, the essential element is the harassment of which a person is a victim of the tacit or express consent of the authorities of the country from which the person has the nationality, harassment inflicted by reason of race, religion, nationality, membership to a particular social group or political opinion.

Astorga, Gabriel Oscar Farias v. M.E.I. (I.A.B. 79-1035), Scott, Loiselle, Teitelbaum, July 23, 1979 (See CLIC, No. 12.12, February 25, 1980); Hurt, Waclaw Antoni Mihael v. M.E.I. (F.C.A., no. A-362-77), Heald, Ryan, Kelly, January 25, 1978 (not yet reported); Hurt, Waclaw Antoni Mihael v. M.E.I. (I.A.B. 77-9105), Weselak, Benedetti, Teitelbaum, April 5, 1979 (See CLIC, No. 8.11, October 29, 1979); Oyarzun, Ana Maria Contreras v. M.E.I. (I.A.B. 79-1036), Houle, Tremblay, Loiselle, October 31, 1979 (See CLIC, No. 14.9, April 24, 1980); Iyar, Tharoshuni Arjununan v. M.E.I. (I.A.B. 79-1237), Scott, Houle, Loiselle, January 15, 1980 (not yet reported); Araya Heredio, Juan Alejandro v. M.E.I. (I.A.B. 76-1127), Houle, Legaré, Tremblay, January 6, 1977 (See CLIC, No. 1.11, March 20, 1979); Pasmino, Hector Edgardo Pinto v. M.E.I. (I.A.B. 79-9109), Weselak, Teitelbaum, Davey, July 12, 1979 (See CLIC, No. 11.13, January 25, 1980).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, December 12, 1979 **Judgment pronounced:** December 12, 1979 **Reasons by:** J.-P. Houle (in French; 9 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1082 **Counsel:** M. Fournelle, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

18.10

Jan Piotr Kwiatkowski

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - FEAR OF PERSECUTION FOR REASONS OF RELIGION - CANADIAN NEWSPAPER MENTIONING THAT THE APPLICANT IS CLAIMING REFUGEE STATUS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 45, 70, 71

The applicant is claiming refugee status on the ground that he fears persecution because at a certain time, he apparently for opportunistic aims to do better in his profession, joined the Communist Party ruling Poland and then was expelled. His second claim to refugee status is based on the fear of persecution for reasons of religion. He was a teacher and the school authorities forbade the practicing of religion to their teachers, and forbade them to teach religion to the children. His third base for claiming to be a refugee is because "The Gazette" mentioned that he requested political asylum in Canada.

Held: Application refused to proceed and the applicant is determined not to be a Convention refugee. If the Board would accept the applicant's counsel suggestion that every person becomes "a political refugee" as soon as a newspaper in Canada mentions somebody's name as seeking "political asylum" without any other grounds for considering his refugee claim, it would completely destroy the whole humanitarian concept of helping people who really have a well-founded fear of persecution to seek refugee status under the Immigration Act, 1976.

Coram: F. Glogowski (Vice-Chairman), G. Loiselle and R. Tremblay Case heard: in Montreal, December 13, 1979 Judgment pronounced: December 13, 1979 Reasons by: F. Glogowski (in English; 6 pp.), concurred in by G. Loiselle and R. Tremblay Docket no.: 79-1220.

18.11

Jose Antonio Lazo-Cruz

REFUGEE - REDETERMINATION - MEMBER OF A SOCIAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant is claiming refugee status on the ground that he fears persecution because of membership in a particular social group and because of political opinions he holds. He describes himself as a militant in the Peoples Revolutionary Army engaged in guerrilla activity. He was arrested only once in 1976 when after twelve hours of detention he was released as a result of the influence of a government supporter, a friend of his father.

Held: Application refused to proceed, the applicant is determined not to be a Convention refugee. He is a member of the Peoples Revolutionary Army which in the terms of the Convention is not a "social group". If he is fearful of returning to his country of origin and based on his story he has reason to be, then that fear flows from violent criminal activity which is beyond the definition of a "refugee" as set out in the United Nations Convention.

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak and D. Davey Case heard: in Vancouver, January 16, 1980 Judgment pronounced: January 16, 1980 Reasons by: C.M. Campbell (in English; 3 pp.), concurred in by A.B. Weselak and D. Davey Docket no.: 80-6004.

18.12

Viatcheslav Drozd and Tatiana Drozd v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR REASONS OF NATIONALITY, RELIGION, AND POLITICAL OPINION

The applicant and his daughter are claiming refugee status on the grounds that they fear persecution resulting from their nationality, their religion and their political beliefs. They are non-Communists, members of the Orthodox Christian church and Ukrainians living in a Russian dominated society. Their opportunities for worship are limited and when exercised they feel discrimination.

**Held:** Applications having been allowed to proceed, the applicants are determined not to be Convention refugees. The Board is satisfied that life under Russian Communism is distasteful to these non-Communist Christian Ukrainians to whom freedom, church and heritage are extremely important. Further, they suffer discrimination in their situation but the Board is not satisfied that this takes the form of persecution.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and F. Glogowski **Case heard:** in Toronto, March 4, 1980 **Judgment pronounced:** March 6, 1980 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by R. Tremblay and F. Glogowski **Docket nos.:** 79-9396 and 79-9395 **Counsel:** L.W. Bardyn, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

18.13

Mohammed Said Sleiman

REFUGEE - REDETERMINATION - ORDER OF FEDERAL COURT REFERRING THE MATTER BACK TO THE BOARD FOR RECONSIDERATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71

The original decision of the Immigration Appeal Board on the application of the applicant for a redetermination of his claim was taken to the Federal Court of Appeal whose decision was to refer the matter back to the Board for reconsideration.

**Held:** Application refused to proceed, and the applicant is determined not to be a Convention refugee. It was recognized that in consequence of the turmoil in the Middle East, to return to Lebanon, his place of habitual residence, would be unattractive to the applicant. However, he was raised in Lebanon and there is no evidence that he or any member of his family have ever suffered persecution or faced any special difficulty in that country as a result of their race, religion, nationality, membership in a particular social group, or political opinion beyond the problems they would face in consequence of the general circumstances existing there. There is no evidence of any activity, belief or relationship which would set the applicant or any member of his family apart to the extent they would be selected for persecution. He travelled freely to Canada for the specific purpose of furthering his education. Having accomplished this objective he is free to return home.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski et R. Tremblay **Case heard:** in Vancouver, April 10, 1980 **Judgment pronounced:** April 10, 1980 **Reasons by:** C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and R. Tremblay **Docket no.:** 79-6125.

---

18.14

Nezihi Yilmaz and wife Zuhai Yilmaz

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE NOT A MEMBER OF ANY GROUP

COUNSEL - CHOICE OF OWN COUNSEL WHETHER A LAWYER OR AN IMMIGRATION CONSULTANT - VALIDITY OF PROCEEDINGS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 30(1), 45(1), 70(1), 71

The applicants, citizens of Turkey, are claiming refugee status on the ground that they fear persecution because they are not members of any group: leftist and rightist groups are dangerous for them because they are in the neutral zone. In his declaration, the male applicant is claiming that at his inquiry and examination under oath he was represented by a person that he believed was a lawyer. Apparently the latter was not a lawyer but represented himself as such and had been charged with fraud under the Criminal Code. The applicant, on his own volition, chose that person as counsel for his examination. He was informed at the outset of the hearing through an interpreter that that person was an Immigration consultant and proceeded without objection. The Board finds that the examination was conducted properly and all the rights of the applicant were safeguarded.

**Held:** Application refused to proceed and the applicants are determined not to be Convention refugees. The applicants were harassed by some extortionists, who maybe were involved in some political activities, but it is evident that they were never persecuted by the Government; on the contrary, they applied to the security forces for some help and protection.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:** in Toronto, April 16, 1980 **Judgment pronounced:** April 16, 1980 **Reasons by:** U. Benedetti (in English; 4 pp.), concurred in by A.B. Weselak and R. Tremblay **Docket no.:** 80-9123.

---

18.15 Manuel Alberto Rocuant, wife Eliana de los Mercedes Rocuant, and daughters Brisa Pamela Rocuant, Roxana Patricia Rocuant and Yasana Eliana Rocuant v. Minister of Employment and Immigration

REMOVAL ORDER - EXCLUSION ORDER - MALE NOT IN POSSESSION OF A VISA AT PORT OF ENTRY - FEMALE NOT A GENUINE VISITOR - CHILDREN, MEMBERS OF A FAMILY ACCOMPANYING A MEMBER OF THAT FAMILY WHO MAY NOT BE GRANTED ADMISSION - ALREADY GRANTED REFUGEE STATUS IN ANOTHER COUNTRY - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 20(1), 23(3), 45(1), 72 - IMMIGRATION REGULATIONS, 1978, S. 14(1)(b)

The appellant was ordered excluded because he was a person not in possession of a visa when appearing at the port of entry, his wife because she was found not to be a genuine visitor and the children because they were members of a family accompanying a member of that family who may not be granted admission. The five appeals were consolidated with the counsel's agreement with the understanding that the Board will consider each appeal individually before reaching its decision.

It is a case of a Chilean family that was given refugee status in Peru some time in 1975. The male appellant requested to be resettled in Canada and as second choice he requested to emigrate in Australia, Switzerland or Sweden. He apparently arrived in South Dakota, United States, on a flight from Lima, Peru, and was recommended by a Pastor of the Lutheran Church in Chile to a Pastor in Lima, Peru. It is clear from the other evidence that this Church was instrumental in obtaining permission for this family to travel to the United States. It appears that the family has also been granted protection by the United States as refugees, a country from which they did not fear persecution so they were told by the Refugee Status Advisory Committee in Canada that they should return to the United States and could not remain in Canada as refugees.

It was never established that they in fact would be admitted back to the United States even if he wished to enter. At the hearing, both husband and wife made statements that they would rather go to a third country, perhaps Sweden, than to the States. There is no firm indication anyhow as to what status he had in the United States and whether he is admissible there at this time.

**Held:** Appeal allowed on equitable grounds, the five removal orders are quashed and the Board directs that the members of the family be examined as persons seeking admission at a port of entry.

C.M. Campbell (dissenting)

I would dismiss the appeal, I find nothing in the record of this family to justify the granting of special relief. The appellant and his family were granted refugee status in the United States. Subsequently they both returned to Chile and each in the process took advantage of the services provided by the Chilean Government Services. It is clear from the evidence that Mrs. Rocuant had no fear of returning to Chile and that Mr. Rocuant returned to test the economic climate and found it wanting. Whatever their refugee status, in Canada or in the United States, I am satisfied they have overcome their fear of returning to Chile for other than economic reasons. Since Mr. Rocuant with his single-minded objective of remaining in Canada has not tested his re-admissibility to the United States there is no evidence they would not be readmitted. They have two places to go, home to Chile or to the United States where they have refugee status.

When he attempted immigration to Canada through the established processes he failed. Having failed, rather than direct his attention to accommodating himself and his family to the hospitality of the United States, he imposed himself on Canada. Later, having settled his wife and children here he returned to Chile, abandoning his family to Canadian charity. It is true one of the children is benefitting from medical care in Canada. Had they remained in the United States that care would have been available, and would be again.

**Coram:** C.M. Campbell (Vice-Chairman), (Dissenting), F. Glogowski and E. Teitelbaum  
**Case heard:** in Winnipeg, February 4, 1980      **Judgment pronounced:** February 9, 1980  
**Reasons by:** F. Glogowski (in English; 14 pp.), concurred in by E. Teitelbaum  
**Dissenting reasons by:** C.M. Campbell (in English; 3 pp.)      **Docket no.:** 79-6108;  
79-6109, 79-6110, 79-6111 and 79-6112 (in English; 3 pp.)      **Counsel:** A. Pelz,  
Barrister and Solicitor, for the appellants; I.D. Munn, Esq., for the respondent.

---

18.16      Dikranohi Kendarjian v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - APPLICATION FOR PERMANENT RESIDENCE SHOWING STATUS AS SINGLE - MATERIALITY - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 27(1)(e)

The appellant, a permanent resident, was ordered deported on the ground that she was granted landed by reason of misrepresentation of a material fact in that she signed her Immigration Identification Card in her maiden name which stated that she was single but was in fact married when she arrived in Canada. She claims that she was not aware that her status as single was indicated on this form. Subsequent to her arrival in Canada, she sponsored her fiancé as her husband.

In the instant case the appellant attested to the fact that her husband had no criminal record and no physical or mental disabilities. Counsel contended that since this evidence was before the Board the misrepresentation by the appellant was not material. The Board does not accept the submissions of counsel to this effect since at the time she made the representation there had been no medical examination or further investigation with respect to her husband and he could very well have been prohibited admission under the Immigration Act. The Board therefore finds that the appellant was admitted to Canada having made the misrepresentation of a material fact and therefore finds that the Order is a valid Order, made in accordance with the Immigration Act and Regulations thereunder.

**Held:** Appeal allowed on equitable grounds. The appellant, while a citizen of Iraq, is of Armenian descent. She claims that she left Iraq for political reasons, that she was a teacher in Iraq and the schools had been taken over by the government and no Armenian was being taught in the schools. It appears that the appellant and her husband, were she returned to Iraq or he to Lebanon, would suffer considerable difficulties in these respective countries. The appellant is steadily establishing herself in Canada and one of the objectives of the Immigration Act is "to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad".

M.M.I. v. Brooks [1974] S.C.R. 850; 36 D.L.R. (3d) 522; Hilario v. M.M.I. [1978] 1 F.C. 697; Ebanks, Barbara Elinora v. M.M.I. (F.C.A., No. A-559-76), Jackett, Urie, MacKay, January 11, 1977 (not yet reported).

Coram: A.B. Weselak (Vice-Chairman), F. Glogowski and D. Davey Case heard: in Toronto, March 5, 1980 Judgment pronounced: March 5, 1980 Reasons by: A.B. Weselak (in English; 5 pp.), concurred in by F. Glogowski and D. Davey Docket no.: 79-9382 Counsel: M.C. Birley, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

18.17 Luz Maria Perez-Pinto v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - CONVICTED OF A CRIMINAL OFFENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 27(1)(d)(i) - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, S. 4(2)

The appellant, a permanent resident, was granted landing under Project 97. She was ordered deported on the ground that she was convicted of an offence under the Narcotic Control Act, namely possession for the purpose of trafficking, and was sentenced to a term of imprisonment of eighteen months.

Held: Appeal dismissed. The appellant, when she committed this offence was not a teenager caught up in the milieu of a peer group with a small supply of drugs for distribution in the street. She was a young woman, a mother, arrested with large amounts of the drug, with the potential of substantial profit.

Tzemanakis v. M.M.I. 8 I.A.C. 156/165.

Coram: C.M. Campbell (Vice-Chairman), D. Davey and A.B. Weselak Case heard: in Vancouver, January 15, 1980 Judgment pronounced: March 24, 1980 Reasons by: D. Davey (in English; 6 pp.), concurred in by A.B. Weselak and C.M. Campbell Docket no.: 79-6063 Counsel: I.D. Munn, Esq., for the respondent.

---

18.18 Rogelio Astudillo Gudino v. Minister of Employment and Immigration

REMOVAL ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - VISA OBTAINED AS A RESULT OF AN EMPLOYMENT - EMPLOYMENT NO LONGER EXISTING - VISA CANCELLED ON THE PHONE - MATERIALITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 27(1)(e), 72(1)(b), 76(1)

The appellant, a permanent resident, has obtained, in his country of origin, his visa for landing as a result of an assured employment in Canada. Just before the appellant left the country he received a phone call advising him of a change in his situation in respect of employment and therefore his visa was cancelled. He was told to wait until an employment would be available and another visa would be issued. He ignored the cancellation of the visa by phone and proceeded to Canada. He was ordered deported on the ground that he was granted landing on the basis of an invalid visa.

Held: Appeal allowed on legal and equitable grounds. The number of points given to the prospective immigrant for assured employment in Canada is very material in the process of admitting immigrants to Canada, therefore, the change of employment should be reported to the Immigration authorities before or after signing the application for a visa. The Board therefore agrees with the respondent's submission that until landing takes place a visa can be withdrawn or cancelled if the circumstances warrant it. A visa, therefore, is a document which, to be invalidated should be cancelled by authorized officials of Employment and Immigration Commission, in the proper manner in writing or by placing a stamp marked "cancelled" on the document. In this particular case, the appellant was only advised by a telephone call that he should not present the visa that was issued to him at the border. As there is no evidence that his visa was cancelled, there was no proper basis for issuing the order of deportation.

Vogel, Dieter v. M.E.I. (I.A.B. 77-6014), C.M. Campbell, J.C.A. Campbell, Steele, September 23, 1977 (See CLIC, No. 1.2, March 20, 1979).

Coram: F. Glogowski (Vice-Chairman), U. Benedetti and D. Davey Case heard: in Toronto, January 10, 1980 Judgment pronounced: April 10, 1980 Reasons by: F. Glogowski (in English; 8 pp.), concurred in by U. Benedetti and D. Davey Docket no.: 79-9017 Counsel: C.C. Hoppe, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

18.19 Robert Eastwood Crabtree v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - OUTSIDE CANADA FOR MORE THAN 183 DAYS - PRESUMPTION OF ABANDONMENT OF PERMANENT RESIDENCE IN S. 24(2) - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 24(1)(a), (2), 25, 27(2)(e)

The appellant was a landed immigrant in Canada for eleven years and went to the Philippines on a visit. While there, he found employment and was absent from Canada for a twenty-month period. He returned to Canada without a returning resident permit but upon arrival he stated he was a visitor. He just reported to the Immigration authorities a couple of days later and claimed he was a Landed Immigrant. The issue in this case is whether or not he lost his status as a landed immigrant in Canada during this twenty-month period of absence.

Held: Appeal allowed on legal grounds and the deportation order is quashed. The Board is satisfied that the appellant never intended to abandon Canada. When he lost all of his effects and his savings in a fire he decided to leave as soon as he could finance the trip. He went first to Miami with a specific objective and then to Vancouver where he had lived and worked for eleven years of his life. Here he found what he needed most in his distress, was the support of friends. He came to the only place in the world where this support was available to him. Even though he left no possessions and even though his roots may be shallow, this is the country in which he has roots of any kind.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti Case heard: in Vancouver, February 11, 1980 Judgment pronounced: February 11, 1980 Reasons by: C.M. Campbell (in English; 8 pp.), concurred in by F. Glogowski and U. Benedetti Docket no.: 79-6257 Counsel: R. Brown, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

18.20 Raphael Anthony Simpson v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF A CRIMINAL OFFENCE - HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d)(i), 72

The appellant, a permanent resident, has been ordered deported on the ground that he has been convicted of an offence under the Criminal Code; namely the offence of robbery for which a term of imprisonment of more than six months has been imposed.

Held: Deportation order stayed on compassionate grounds for a period of two years from the date of release on parole, or otherwise, and the appellant is ordered to report his change of address and report to the nearest Immigration officer every three months from the date of release. The appellant arrived in Canada at the age of sixteen and has been the object of other charges, this is his only conviction, and is an isolated one. The Board considers this offence serious as a shot-gun was involved in the robbery; nevertheless, it must consider that the appellant is still a youth and has no close relatives in Jamaica. All his immediate family are in Canada, at least those of whom he knows their whereabouts.

U. Benedetti (dissenting)

I am of the opinion that the appellant is not deserving any compassionate or humanitarian considerations. After his arrival in Canada he only attended school for one year and his work record has been very poor. Although the appellant had the moral and financial support of his mother, he committed a very serious crime for which there were no accounts given for his action. The appellant is now twenty-one years of age and the fact that he has few close relatives in Jamaica is irrelevant. He failed to take advantage of all the opportunities he had to become a productive member of our society and had to be supported by his mother - even his drug habit.

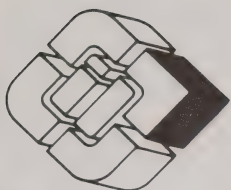
Coram: A.B. Weselak (Vice-Chairman), E. Teitelbaum and U. Benedetti (Dissenting)  
Case heard: in Toronto, April 2, 1980      Judgment pronounced: April 17, 1980  
Reasons by: A.B. Weselak (in English; 3 pp.), concurred in by E. Teitelbaum  
Dissenting reasons by: U. Benedetti (1 p.)      Docket no.: 79-9467      Counsel: S. Whitzman, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

ISBN 0225-1620

LAG



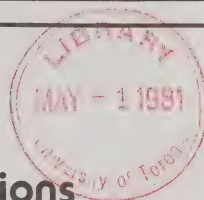


# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 19

Date October 16, 1980



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

19.1	79-9295	Kwong, Pak Yeung v. Minister of Employment and Immigration
19.2	79-6128	Lui, Man Yee v. Minister of Employment and Immigration
19.3	80-6112	Yasseen, Alicia Barrientos v. Minister of Employment and Immigration
19.4	80-6119	Bassi, Kuldeep Singh v. Minister of Employment and Immigration

#### REFUGEES

19.5	79-1053	Asfaha, Negash v. Minister of Employment and Immigration
19.6	79-9375	Florkowski, Boguslaw v. Minister of Employment and Immigration
19.7	79-1110	Retamal Sanchez, Jesus Enrique and Diaz Valencia, Maria Cecilia v.
	79-1111	Minister of Employment and Immigration
19.8	79-1165	Murat, Lamarre v. Minister of Employment and Immigration

#### REMOVAL ORDER

19.9	80-6035	Sharma, Deo Datt v. Minister of Employment and Immigration
------	---------	--

19.1

Pak Yeung Kwong v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE WOULD CAUSE AN EXCESSIVE DEMAND ON THE HEALTH SERVICES - DIAGNOSIS NOT INCLUDED IN THE OFFICIAL DOCUMENT - DIAGNOSIS ATTACHED THERETO - RIGHT OF SPONSOR TO KNOW THE REASONS OF REFUSAL - COMPASSIONATE AND HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79

The appellant filed an application to sponsor the application for admission into Canada of his parents. The application was refused in respect of the father on the ground that his state of health would cause an excessive demand on our health services. The medical opinion shows no diagnosis and simply bears the notation "inadmissible as excessive demand on health care resources". Both counsels argued that this opinion is defective, in that it does not disclose any diagnosis. There is no doubt that a sponsor must know the case he has to meet and in the case of a refusal on medical grounds, he must be aware of the diagnosis. In the present case, although it was not physically incorporated into the official medical opinion, there is a document which was attached and that described the health of the sponsoree.

**Held:** Appeal allowed on equitable grounds. In the circumstances of the case, there would appear to have been sufficient compliance with the dictates of natural justice in that both the sponsor and his father were made aware of the problem. The refusal was in accordance with the law at the time it was made. There appear to be ample compassionate and humanitarian reasons for uniting this family.

**Coram:** J.V. Scott (Chairman), D. Davey and R. Tremblay **Case heard:** in Toronto, April 18, 1980 **Judgment pronounced:** April 18, 1980 **Reasons by:** J.V. Scott (in English; 3 pp.), concurred in by D. Davey and R. Tremblay **Docket no.:** 79-9295  
**Counsel:** M.J. Bjarnason, Esq., for the appellant; J.D. Taylor, Esq., for the respondent.

---

19.2

Man Yee Lui v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE DID NOT ANSWER TRUTHFULLY ALL QUESTIONS PERTINENT TO HIS ADMISSION - REAL REASONS FOR REFUSAL CONTAINED IN A MEMORANDUM DATED AFTER THE LETTER OF REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant filed an application to sponsor into Canada the admission of her mother and her two brothers, which application was refused on the ground that the mother did not answer truthfully all questions put to her by the visa officer for the purpose of her admission into Canada. In a memorandum from the Immigration authorities in Hong Kong to the Director General in British Columbia we find the real reasons for refusal, and the date of the memorandum is nearly three weeks after the date of the letter of refusal. The mother apparently has misrepresented her marital status and her children, the two brothers of the appellant, are the issue of a concubine relationship; they, as a result, do not possess the status of legitimacy and are not sponsorable.

**Held:** Appeal allowed on legal grounds. There was no evidence on which the Immigration officer in Hong Kong could base his recommendation for refusal. In addition, the letter of refusal did not contain sufficient information to acquaint the appellant with the real reason for the refusal. The real reasons were spelled out only in a memorandum dated nearly three weeks after the date of the letter of refusal.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and D. Davey **Case heard:** in Vancouver, May 6, 1980 **Judgment pronounced:** May 6, 1980 **Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by R. Tremblay and D. Davey **Docket no.:** 79-6128  
**Counsel:** D.J. Rosenbloom, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

19.3 Alicia Barrientos Yasseen v. Minister of Employment and Immigration

SPONSORSHIP - DOUBTS ON THE FULFILMENT OF THE UNDERTAKING - CONSIDERATIONS OF THE CANADIAN COMMUNITY AT LARGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 6(1), (2)

The appellant filed an application to sponsor into Canada the admission of her immediate family, which application was refused on the ground that her financial capabilities were not sufficient to assume responsibility of six other persons in Canada.

**Held:** Appeal dismissed; the Board should not grant special relief. While considering special relief in this type of appeal, it has to consider also the interests of the Canadian Community at large. With the best intentions of the appellant to support financially her sponsored family, there is the possibility that she will have to seek more support from public funds to cope with additional responsibilities to lodge, feed, and dress a family of eight including herself.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and U. Benedetti **Case heard:** in Winnipeg, May 12, 1980 **Judgment pronounced:** May 12, 1980 **Reasons by:** F. Glogowski (in English; 4 pp.), concurred in by R. Tremblay and U. Benedetti **Docket no.:** 80-6112 **Counsel:** S. Pinx, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

19.4 Kuldip Singh Bassi v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF SPONSOREE - THREE APPLICATIONS AT THREE DIFFERENT DATES - WHICH APPLICATION SHOULD BE CONSIDERED - CRUCIAL TO DETERMINE THE AGE OF SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant filed an application to sponsor the application for admission into Canada of his mother and two sisters. The application was refused in respect of one sister on the ground that she did not give satisfactory evidence that she was under twenty-one years of age. There are three applications made on three different dates and the Board had to decide which application should be considered. In this appeal, the date of the application is crucial, namely whether the sister was under the age of 21 at the time of the application.

**Held:** Appeal allowed on legal grounds. The appellant's sister was under 21 years of age and therefore was in the sponsorable category when her brother made the application for admission to Canada of his mother and two dependent daughters on March 30, 1977. The application made and signed by the appellant and properly served on the Immigration officer on March 30, 1977 is the one that should be accepted by the Visa officer as a starting point for processing the sponsorship application. The third application dated August 27, 1977 was not signed by the applicant. As for the first application dated August 25, 1976, apparently the wife of the appellant, separated at the time from him, withdrew the sponsorship application for his family without authorization and knowledge. It was suggested to him to file a new application which he did and that is the application dated March 30, 1977.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and R. Tremblay **Case heard:** in Winnipeg, May 14, 1980 **Judgment pronounced:** May 14, 1980 **Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by U. Benedetti and R. Tremblay **Docket no.:** 80-6119 **Counsel:** D.S. Schafer, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

19.5

Negash Asfaha v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF CIVIL WAR IN COUNTRY OF ORIGIN - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71

The applicant is claiming refugee status on the ground that he is a citizen of Ethiopia, having been born in the province of Eritrea. His province of habitual residence has always been the province of Eritrea. The Government forces are killing many Eritreans on account of the civil war between this province and the remainder of the country. He has received a letter from his wife telling him that their house had been seized or nationalized by the regime en place, and that only two rooms were left to them as living quarters and that two of her brothers have been killed and the whole situation was very bad.

**Held:** Application being allowed to proceed, the applicant is determined not to be a Convention refugee. It is a fact of general knowledge that there have been for decades now tribal wars in Ethiopia and that the whole situation has worsened since 1975 because or not of the intervention of third foreign countries. It is understandable that any human being will have a feeling of fear to return to a country where civil war is rampant but taken alone, such a feeling of fear does not constitute a ground contemplated in the Convention or the Act. Upon a meticulous assessment of the whole of the evidence, the Board comes to the conclusion that the claimant is either an economic refugee or a refugee from an actual theatre of warfare but not a Convention refugee as defined in the Convention or the Act.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** in Montreal, January 7, 1980 **Judgment pronounced:** January 8, 1980 **Reasons by:** J.-P. Houle (in English; 10 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 79-1053 **Counsel:** J. Rosenfeld, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

19.6

Boguslawa Florkowski v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - RENEWAL OF PASSPORT TWICE - WHETHER IN RENEWING THE PASSPORT THE APPLICANT ACTED IN A MANNER CONSISTENT WITH HER FEAR OF PERSECUTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 71(1)

The applicant, a citizen of Poland, is claiming refugee status on the ground that she fears persecution because of her political involvement in an underground anti-communist organization, the White Panther, organized by high school students. They had big demonstrations in 1976 and during these demonstrations several of her friends were arrested. In the six months following the demonstrations, she was never arrested or even questioned by the authorities. She did not claim refugee status on arrival in Canada nor at the time of seeking two extensions of her visitor's visa. She did not make her first claim until 10 months after her arrival. She did, at the Polish Consulate in Toronto, renew her passport on two occasions and sought to renew it a third time unsuccessfully. The Board has to consider whether in renewing the passport the applicant acted in a manner consistent with that of a person with a well-founded fear of persecution from his country of nationality.

**Held:** Application having been allowed to proceed, the applicant is determined not to be a Convention refugee. As a citizen of Poland it is certainly her right to avail herself of the services of the Polish Consulate in a foreign country and have her passport renewed. We question whether the exercising of rights from one's Government is totally consistent with fear of persecution from that same Government once one is free of that country's jurisdiction. Renewal of her passport in Canada can only be considered as one element of her claim to refugee status. The Board has reviewed the total evidence before it, including the applicant's failure to claim refugee status until the expiry of her visitor's status, her freedom to work in Poland, the fact that she was never questioned or arrested and the fact that her parents have not been questioned since she left Poland.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and R. Tremblay **Case heard:** in Toronto, April 14, 1980 **Judgment pronounced:** April 14, 1980 **Reasons by:** D. Davey; (in English; 7 pp.), concurred in by A.B. Weselak and R. Tremblay **Docket no.:** 79-9375 **Counsel:** J. Hladun, Esq., for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

19.7 Jesus Enrique Retamal Sanchez and Maria Cecilia Diaz Valencia v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEARS PERSECUTION BECAUSE OF A CAR ACCIDENT WITH A MEMBER OF THE MILITARY - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70(1), 71

The applicant is claiming refugee status on the ground that he fears persecution in Chile if he is returned because he has had a car accident. Apparently the other party involved in the accident is a chief of the military force in General Pinochet's regime. As a result of this accident the applicant was accused of a terrorist act; the other party was never accused. After a conditional discharge the applicant is no longer accused of a terrorist act but of attempted murder. He could never have access to his file, no lawyers wanted to represent him, further he was never heard in court. It appears that it turned out to be a political case. With some help he was able to go to Japan where he claimed refugee status which status was refused. He had a permit to stay for sixty days but he and his companion overstayed the period and had to leave; they then came to Canada.

**Held:** Application having been allowed to proceed, the applicants are determined to be Convention refugees. The applicant is out of his country of origin and his right to be heard was refused by the judicial authorities which are under the control of the political power. This fundamental right constitutes an abusive and excessive harassment. Because of this negation of rights, the applicant cannot avail himself of the protection of his country.

R. Tremblay (dissenting)

I must conclude that the applicant does not meet the criteria of the Convention. The applicant is complaining that no lawyers wanted to represent him; of course, the other party was a colonel of the army, so lawyers were afraid. But other Chileans would have been in the same situation. From the testimony of an expert the applicant was only at a preliminary stage of his case, that is why he did not see any documents or judge. He was able to have a conditional discharge and the militaries did not control his whereabouts. He obtained his exit visa and this visa is issued by the "International police" only if the person requesting it has a virgin file.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay (Dissenting) and G. Loiselle **Case heard:** in Montreal, February 21, 1980 **Judgment pronounced:** April 23, 1980 **Reasons by:** J.-P. Houle (in French; 9 pp.), concurred in by G. Loiselle **Dissenting reasons by:** R. Tremblay (in French; 6 pp.) **Docket no.:** 79-1110 and 79-1111 **Counsel:** J. Westmoreland-Traoré, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

19.8 Lamarre Murat v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IDENTITY OF THE APPLICANT - PROOF

The applicant, a citizen of Haiti, is claiming refugee status on the ground that because he was a member of the Parti Unifié Communiste, a clandestine Party, he was arrested by members of the Tonton Macoute, interrogated, beaten and imprisoned for over seven years without trial. Two days after his arrest, his mother, his sister and brother were also arrested. There was an element of this case which although never directly proved is implicit throughout and that is that the Minister and presumably the Refugee Status Advisory Committee apparently doubted that the applicant is the person he claims to be; i.e. that he is one and the same person as the Lamarre Hilaire released from the National Penitentiary in September 1977. His mother, sister and friends that were in prison with him and knew him testified that he was the same person.

**Held:** Application being allowed to proceed, the applicant is determined to be a Convention refugee. The testimony of a person that was in the same cell of the applicant left no reasonable doubt that the latter was in prison in Haiti as he claimed, and that Lamarre Murat and Lamarre Hilaire are one and the same person.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and G. Loiselle **Case heard:** in Montreal, May 7 and 13, 1980 **Judgment pronounced:** May 13, 1980 **Reasons by:** J.V. Scott (in English; 8 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1165  
**Counsel:** J. Westmoreland-Traoré, Barrister and Solicitor, for the applicant; R. St-Louis, Esq., for the respondent.

---

19.9 Deo Datt Sharma v. Minister of Employment and Immigration

REMOVAL ORDER - SPONSOREE IN POSSESSION OF A VISA - WITHDRAWAL OF SPONSORSHIP - NO MORE BASIS FOR THE INSUANCE OF THE VISA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 32(5)(b), 72(2)(d), 76(1)(b) - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(i)

The appellant first arrived in Canada as a visitor, he met his future wife and they returned to Fiji to get married. She then came back to Canada and sponsored her husband's application for permanent residence in Canada. On the eve of her husband's arrival in Canada, she left the house of her brother-in-law where she was living and also she phoned her husband in Fiji to tell him she was moving and to ask if he was prepared to live with her or stay with his brother. From an examination of all the evidence this question clearly emerges as the crux of this case. She contends that her husband's reply was that he would stay with his brother before making a decision and the husband contrarily asserts that his answer was clear that he would stay with her. Believing the matter to be settled he proceeded to Canada where he was informed that his wife had withdrawn her sponsorship the day of his departure from Fiji. Because he was deprived of his wife's sponsorship - the basis on which he was issued a visa, he was made the subject of an inquiry and was ordered excluded.

**Held:** Appeal allowed on equitable grounds, order of exclusion quashed and the appellant is directed to be examined as a person seeking admission at a port of entry. The appellant's brother is willing and offered to give an undertaking of support on his behalf. The majority opinion is that he would establish himself in Canada with his brother's help. It is believed that he did not come to Canada with the intent to deceive the authorities, and that as far as he was concerned his marital status was unchanged and he was unaware, until apprised at the airport, of his wife's withdrawal of sponsorship. For these reasons, he should not have a blemish on his record and be penalized for an action taken by his wife without his knowledge.

C.M. Campbell (dissenting)

I would dismiss the appeal. It is not clear from the evidence but in my view this was not a marriage arranged in good faith according to Indian custom. We know nothing of any relationship between the families of these two people before they were introduced. It appears from her testimony that although marriage was immediately discussed and delayed, the engagement decision made within two months was made by them. I find nothing in their relationship or the relationship of the families to suggest this union was consistent with their Indian culture and tradition and had any basis for success. I can only conclude, but not as to degree, that the prospective admission to Canada of the appellant was a factor in the arrangements.

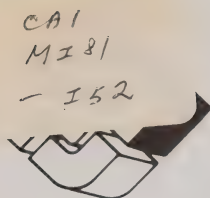
Coram: C.M. Campbell (Vice-Chairman), (Dissenting), E. Teitelbaum and D. Davey      Case  
heard: in Vancouver, March 18, 1980      Judgment pronounced: March 19, 1980      Reasons  
by: E. Teitelbaum (in English; 4 pp.), concurred in by D. Davey      Dissenting reasons  
by: C.M. Campbell (in English; 2 pp.)      Docket no.: 80-6035      Counsel: W.P. Beck,  
Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

---

ISSN 0225-1620

LAG



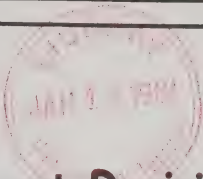


# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 20

Date November 13, 1980



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Elizabeth Britt Côté

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

20.1 80-9090 Singh, Amrik v. Minister of Employment and Immigration  
20.2 79-9407 Bagga, Sushma Rani v. Minister of Employment and Immigration

#### REFUGEES

20.3 79-1136 Kifletsion, Tekeste v. Minister of Employment and Immigration  
79-1137 Ghebreiyesus, Kidane v. Minister of Employment and Immigration  
79-1139 Afework, Isaak v. Minister of Employment and Immigration  
20.4 80-1074 Bastienne, James Gilbert

#### MOTION

20.5 80-1006 Krikorian, Vahan Manouk v. Minister of Employment and Immigration

20.1

Amrik Singh v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT FURNISHING NECESSARY DOCUMENTS FOR THE PROCESSING OF THE APPLICATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant filed an application to sponsor the application for admission into Canada of his parents, his brother and sister which application was refused on the ground that the sponsoree did not respond to correspondence sent to him by the visa office. He was asked for certain documents necessary for processing his application for permanent residence. The sponsor did not appear in person before the Immigration Appeal Board. Instead, he sent a letter in which he alleged that it was due to the illiteracy of his parents and siblings that there was no response to the correspondence.

**Held:** Appeal dismissed. It may be true that the sponsor's family members are illiterate in English but we believe that it is highly unlikely that they do not know what an addressed envelope means and that they would not take the letters to someone for translation.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum  
**Case heard:** in Toronto, June 24, 1980  
**Judgment pronounced:** June 24, 1980  
**Reasons by:** E. Teitelbaum (in English; 5 pp.), concurred in by U. Benedetti and A.B. Weselak  
**Docket no.:** 80-9090

20.2

Sushma Rani Bagga v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE HAS BEEN ORDERED DEPORTED FROM CANADA - SPONSOREE NOT IN POSSESSION OF THE CONSENT OF THE MINISTER TO COME BACK - ARRANGED INDIAN MARRIAGE - ENGAGEMENT CEREMONY ACCORDING TO INDIAN CUSTOM - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), 57, 79 - IMMIGRATION ACT, R.S.C. 1970, C. I-2, S. 5(p)

The appellant filed an application to sponsor the admission into Canada of her fiancé, which application was refused on the ground that he was seeking to come into Canada without the consent of the Minister. He needed that consent since he had already been deported from Canada. There was an engagement ceremony here in Canada and it was attended by the parents of both families and about one hundred people. The same ceremony took place in New Delhi at the house of the sponsoree with a priest in attendance.

**Held:** Appeal allowed on equitable grounds. The Board was favourably impressed with the testimony of all witnesses; the engagement between the appellant and the sponsoree is a bona-fide one.

**Coram:** A.B. Weselak (Vice-Chairman); U. Benedetti and D. Davey  
**Case heard:** in Toronto, May 26, 1980  
**Judgment pronounced:** May 26, 1980  
**Reasons by:** U. Benedetti (in English; 4 pp.), concurred in by A.B. Weselak and D. Davey  
**Docket no.:** 79-9407  
**Counsel:** R.A. Sainaney, Esq., for the appellant; J.D. Taylor, Esq., for the respondent.

20.3

Tekeste Kifletsion v. Minister of Employment and Immigration  
Kidane Ghebreyesus v. Minister of Employment and Immigration  
Isaak Afework v. Minister of Employment and Immigration

REFUGEES - REDETERMINATION - FEAR PERSECUTIONS FOR REASON OF RACE - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicants, Eritreans, citizens of Ethiopia, are claiming refugee status on the ground that the Ethiopians and the Ethiopian Government are carrying out genocide against Eritreans. They stated that friends and relatives have been killed by the Ethiopians and if they themselves are returned in their country have serious reason to believe that they would be killed or imprisoned.

Held: Applications being allowed to proceed, the applicants are determined to be refugees "sur place". When the applicants left their country to work as seamen, they did not have the intention of becoming refugees but as the situation deteriorated, they realized that their liberty and their life would be in jeopardy if they returned to Ethiopia. The United Nations Convention applies to someone who comes within the definition of a refugee "sur place". It is common knowledge that the military coup of 1974 grew into a civil war verging on genocide, thousands of Eritreans have been killed and thousands fled to Sudan as refugees. If social discrimination because of the race alone is not sufficient to obtain refugee status within the meaning of the Convention, a civil war directed against a minority race inside a country, verging on genocide, is without doubt evidence of racial persecution.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, February 28, 1980 Judgment pronounced: February 29, 1980 Reasons by: R. Tremblay (in English; 3 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 79-1136 Counsel: J.H. Grey, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, March 20, 1980 Judgment pronounced: March 21, 1980 Reasons by: R. Tremblay (in English; 4 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 79-1137 Counsel: J.H. Grey, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: in Montreal, April 24, 1980 Judgment pronounced: May 21, 1980 Reasons by: R. Tremblay (in English; 4 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 79-1136 Counsel: J.H. Grey, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

20.4

James Gilbert Bastienne

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY

EXAMINATION UNDER OATH - TWO SENIOR IMMIGRATION OFFICERS CONDUCTED IT - EACH TIME APPLICANT WAS REPRESENTED BY COUNSEL - WHETHER EXAMINATION VALID OR NOT - IMMIGRATION ACT, 976, S.C. 1976-77, c. 52, ss. 2, 14(3), 27(3), 35(3), 45(1)

The applicant, a citizen of the Seychelles, is claiming refugee status on the grounds of political opinion. He states that after a coup in 1977 in the Seychelles, he was visited four times by the police and had to hide in order not to be arrested. He was an active supporter of the government that was reversed by the coup. Before dealing with the merits of the case, the Board had to pronounce on the validity of the examination under oath. The latter was started under one Senior Immigration Officer, was adjourned and then reconvened under another Immigration Officer. On both occasions the application was represented by a counsel although a different one.

Held: Application refused to proceed, the applicant is determined not to be a Convention refugee. The applicant's testimony is not such as to inspire confidence in his veracity. Also he only claimed refugee status after his second entry in Canada, after having been admitted twice as a visitor.

On the validity of the examination under oath, the Board held that a Senior Immigration Officer conducting such an examination has no substantive decision-making powers, he simply obtains the evidence in support of the claim to be a Convention refugee and it is the Minister who makes the decision. I see no reason therefore why an examination under oath, if adjourned, cannot be continued by another Senior Immigration Officer. In the instant case, the examination was properly conducted, the application was represented by legal counsel at all times and an interpreter was provided.

Hatzihristos v. M.M.I. 4 I.A.C. 169/174; Manhas, Supinder Singh v. C.J. Williams and W.M. Wilson and M.M.I. (F.C.T.D., no. T-3968-76), Addy, November 18, 1976 (not yet reported).

Coram: J.V. Scott (Chairman), G. Loiselle and R. Tremblay Case heard: in Montreal, May 20, 1980 Judgment pronounced: May 26, 1980 Reasons by: J.V. Scott (in English; 6 pp.), concurred in by G. Loiselle and R. Tremblay Docket no.: 80-1074.

---

21.5 Vahan Manouk Krikorian v. Minister of Employment and Immigration

MOTION TO ALLOW A COMPLETION OF AN APPLICATION FOR REDETERMINATION - TRANSCRIPT OF EXAMINATION UNDER OATH MISSING - SECTION OF THE ACT MANDATORY - NO EXTENSION OF TIME - NATURAL JUSTICE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant is filing a motion for an order allowing the applicant to complete an application for redetermination of his claim to be a Convention refugee. The transcript of the examination under oath of the claimant as required by s. 70(2) of the Act was missing when the original application was made. The applicant's counsel argued at the hearing that the reason why the application was not complete was because the applicant had been ill-served by successive counsel and had thus been deprived of his statutory rights. On the record, it appears that some effort was made to assist the applicant, by legal counsel acting for his counsel of record. To this effect there was letter asking the Board to reserve the applicant's rights until his attorney returned from his vacation.

Held: Motion dismissed. Section 70(2) of the Act is mandatory. The documentation set out therein must accompany the application for redetermination. Moreover, the application must be "made" within seven days of the Minister's refusal, and there is no provision for an extension of time. However, in the interests of natural justice, and in accordance with the spirit, if not the letter, of the Act, the Board ordered the respondent to file the transcript of the examination under oath. There were no merits in this claim and no reason to conclude that the applicant was prejudiced by the failure to complete his application for redetermination.

Tapia v. M.E.I. [1979] 2 F.C. 468; Fuentes Garcia, Rolando Vicente v. M.E.I. (F.C.A., no. A-123-79), Heald, Ryan, Kelly, July 26, 1979 (not yet reported).

Coram: J.V. Scott (Chairman), G. Loiselle and R. Tremblay Case heard: in Montreal, April 29, 1980 Judgment pronounced: May 29, 1980 Reasons by: J.V. Scott (in English; 3pp.), concurred in by G. Loiselle and R. Tremblay Docket no.: 80-1006  
Counsel: J. Yedid, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.

---

CAI  
M181  
- I52

# Canadian Law Information Council Conseil canadien de la documentation juridique

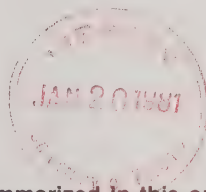
Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 21

Date December 16, 1980

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall



**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

21.1	79-1152	Bien-Aimé, Elzina v. Minister of Employment and Immigration
21.2	79-6159	Kingra, Kulwant v. Minister of Employment and Immigration
21.3	79-9088	Siddiq, Mohammad v. Minister of Employment and Immigration
21.4	79-6283	Sharma, Krishana Kumari v. Minister of Employment and Immigration
21.5	79-6171	Mann, Earlene May v. Minister of Employment and Immigration
21.6	79-9432	Farquharson, Pauline v. Minister of Employment and Immigration
21.7	80-9119	Malik, Samdai v. Minister of Employment and Immigration

#### REFUGEES

21.8	80-1036	Mouryoussef, Mascime
21.9	79-1170	Jerez-Spring, Angel Eduardo
	79-1171	Fuentealba-Munoz, Gabriela Del Pilar
	79-1172	Spring Cardenas, Adriana Mercedes v. Minister of Employment and Immigration

#### MOTION

21.10	78-9045	Bakir, Omar Ahmad Mohammed v. Minister of Employment and Immigration
-------	---------	--

#### EVIDENCE

21.3	79-9088	Siddiq, Mohammad v. Minister of Employment and Immigration
------	---------	--

#### APPLICATION INITIALLY REFUSED

21.4	79-6283	Sharma, Krishana Kumari v. Minister of Employment and Immigration
------	---------	---

#### JURISDICTION OF BOARD

21.10	78-9045	Bakir, Omar Ahmad Mohammed v. Minister of Employment and Immigration
-------	---------	--

21.1 Elzina Bien-Aimé v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREES - FALSE DOCUMENTS - AUTHENTICITY - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 9(3), 19(3), 19(2)(d), 79(2)

The appellant filed an application to sponsor into Canada the admission of her parents and their dependants which application was refused on the ground that they failed to answer correctly the questions asked by the visa officer. The issue in the present appeal is the authenticity of the documents produced. The marriage certificate produced (in which the first line has been amended) is in conflict with the birth certificates of the children, which show them as illegitimate children.

**Held:** Appeal dismissed. The certificate of marriage is not accepted as an authentic document. This puts into doubt the capacity of the appellant to sponsor her parents. The burden of proof was on the appellant and she did not produce any new document that would have rebutted the decision of the immigration officer.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and E. Teitelbaum **Case heard:**  
Montreal, May 28, 1980 **Judgment pronounced:** May 28, 1980 **Reasons by:**  
R. Tremblay (in French; 3 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket**  
**No.:** 79-1152 **Counsel:** J.R. St-Louis, Esq., for the respondent.

---

21.2 Kulwant Kaur Kingra v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREES INADMISSIBLE BECAUSE OF AGE - APPELLANT BECAME CANADIAN CITIZEN - EFFECT OF THE CITIZENSHIP ON APPLICATION OF SECTION 5(1) OF THE IMMIGRATION REGULATIONS, 1978 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 4(c), 5(1)

The appellant filed an application to sponsor into Canada the admission of her parents, her brother and sister. The application was refused in respect of the father in that he was a member of the inadmissible class in that he had not produced such documentation to establish his admissibility including satisfactory evidence that he had reached the age of 60 years. The application was made at the time the appellant was a landed immigrant and her parents were required to be over sixty years of age; section 5(1) of the Immigration Regulations provides that this age limitation does not apply when the sponsor is a Canadian citizen.

**Held:** Appeal allowed on legal grounds for the parents and the sister, appeal dismissed in respect of the brother. There is no conclusive evidence of the parents' ages but the Board is satisfied they were both well under sixty years at the date of application and the refusal would have been in accordance with the law had the appellant not received her Canadian citizenship. As a citizen, the provisions of section 5(1) of the Immigration Regulations, 1978 apply to her parents; there is no age limitation. As for the brother, he became ineligible because of age. The effective date of the citizenship of the appellant is not clear but is certainly later than the date the brother was twenty-one.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti **Case heard:**  
Vancouver, June 10, 1980, **Judgment pronounced:** June 10, 1980 **Reasons by:**  
C.M. Campbell (in English; 2pp.), concurred in by F. Glogowski and U. Benedetti  
**Docket No.:** 79-6159 **Counsel:** B. Sharma, Barrister and Solicitor, for the  
appellant; I.D. Munn, Esq., for the respondent.

---

21.3

Mohammad Siddiq v. Minister of Employment and Immigration

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF THE ADOPTION

EVIDENCE - FOREIGN LAW - EXPERT LEGAL OPINIONS FROM PAKISTAN - WHETHER ADOPTION EXISTS IN PAKISTAN OR NOT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 79 - IMMIGRATION REGULATIONS, 1978, S. 4

The appellant filed an application to sponsor into Canada the admission of his adopted son which application was refused on the ground that an adoption is not recognized as a mode of filiation in Pakistan amongst the Muslims. Legally speaking, adoption does not exist in Pakistan. Adoptions do take place; however, no legal documents are required and hence the adoption has no legal value and cannot be enforced. The record contains a purported Adoption Deed signed by the appellant in which he undertakes all the legal and moral obligations relating to his alleged adopted son, an affidavit by the parents of the sponsoree in which they maintain the appellant has adopted their son. The record also contains an opinion from the Advocates High Court in which it is stated that adoption is not recognized as a mode of filiation in Pakistan amongst the Muslims, that no legal documents are required for adoption and if such documents are executed, these have no legal value and cannot be enforced.

**Held:** Appeal dismissed. The sponsoree does not fall within members of the family class as would qualify for sponsorship within the Immigration Act and the Board finds that it cannot entertain the appeal under the equitable grounds of the Act as to do so would be to expand the family class beyond its statutory limitations which the Board cannot do.

<b>Coram:</b> A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum	<b>Case heard:</b>
Toronto, August 15, 1979 and June 10, 1980	June 10, 1980
<b>Reasons by:</b> A.B. Weselak (in English; 3 pp.), concurred in by D. Davey and E. Teitelbaum	<b>Judgment pronounced:</b>
<b>Docket no.:</b> 79-9088	<b>Counsel:</b> L. Waldman, Barrister and Solicitor, for the appellant; M. Prue, Esq., and D. Taylor, Esq., for the respondent.

21.4

Krishana Kumari Sharma v. Minister of Employment and Immigration

SPONSORSHIP - AGE OF THE SPONSOREE - AUTHENTICITY OF DOCUMENTS

APPLICATION INITIALLY REFUSED - SUBSEQUENT APPEAL ALLOWED ON LEGAL GROUNDS - RES JUDICATA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION ACT, R.S.C. 1970, C. 1-2 (repealed)

The appellant filed an application to sponsor into Canada the admission of her parents, her brother and her sister. The application in respect of the brother was refused on the ground that he did not provide such documentation as was required to establish that his admission would not be contrary to the Immigration Act and Regulations including satisfactory evidence to establish that he was under 21 years of age. This application was initially refused in 1978 and the subsequent appeal was allowed on the ground the refusal was based on the Immigration Act, 1952 (repealed) rather than on the Immigration Act, 1976. The merits were not considered at that time.

In the present appeal the only issue is the age of the brother. In support of his application two school certificates in his name were submitted to the visa officer. At the hearing the appellant produced another copy of a school leaving certificate. In view of the fact one of the certificates submitted initially was found to be fraudulent, this second certificate could only have evidentiary value if it were submitted in a form which assured its authenticity.

**Held:** Appeal dismissed. The Board finds that the doctrine of res judicata does not apply in this case since the merits of the case were not considered in the initial decision.

The Board finds also that the decision made by the visa officer to refuse the application was consistent with the information available to him and that it was in accordance with the law. The Board has no new evidence to justify reversing that decision. Since the sponsoree has not been established as a member of the family class he has no appeal pursuant to section 79(2)(b) of the Immigration Act, 1976.

Akkaoui v. M.M.I. 7 I.A.C. 177/198; De Medeiros v. M.M.I. 3 I.A.C. 365/368.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti **Case heard:**  
Vancouver, June 12, 1980 **Judgment pronounced:** June 12, 1980 **Reasons by:**  
C.M. Campbell (in English; 4 pp.), concurred in by F. Glogowski and U. Benedetti  
**Docket no.:** 79-6283 **Counsel:** S.P. Sharma, Esq., for the appellant; C.J. Dickey,  
Esq., for the respondent.

---

21.5 Earlene May Mann v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE WOULD NOT BE ABLE TO SUPPORT HIMSELF AND DEPENDANTS - BROTHER OF SPONSOREE WILL PROVIDE FOR FINANCIAL SUPPORT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 19(1)(b), (2)**

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused on the ground that he would be unable to support himself, the sponsor and the dependent children. The only issue of the appeal is the ability of the proposed immigrant to support himself and his dependants.

**Held:** Appeal allowed on legal grounds. The evidence is that the brother of the sponsoree, already established in Canada, is supporting the entry of his brother in an unusual and generous manner and commits himself to continue that support. There is an offer of a job for the sponsoree if he is allowed to return to Canada. There is no contrary evidence to suggest he would be unable to provide for himself and his dependants.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle **Case heard:**  
Vancouver, June 23, 1980 **Judgment pronounced:** June 23 1980 **Reasons by:**  
C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and G. Loiselle  
**Docket no.:** 79-6171 **Counsel:** R.O. Rothe, Barrister and Solicitor, for the  
appellant; D.M. Hanbury, Esq., for the respondent.

---

21.6 Pauline Farquharson v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE CONVICTED OF CRIMINAL OFFENCES - SPONSOREE ALREADY DEPORTED - NOT IN POSSESSION OF THE CONSENT OF MINISTER TO RETURN - WHETHER SPONSOREE HAD A FAIR INTERVIEW ON HIS APPLICATION OR NOT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 19(1)(c), (i), 79 - CANADIAN BILL OF RIGHTS, 1960, C. 44, S. 2(e)**

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused on the ground that he was convicted of several criminal offences. He was also deported from Canada because of these convictions and did not have the consent of the Minister to return. The appellant's counsel argued that the sponsoree did not have a fair interview in that the officer conducting it had already made up his mind so that it was not conducted in accordance with section 2(e) of the Canadian Bill of Rights. He asked the Board to consider that a hearing might be reconvened and that such a hearing would obviously necessitate someone who was not familiar with the case and there would have to be deletions to the material that had been forwarded.

Held: Appeal dismissed. Referring to recent cases, the Board dismissed counsel's submission that the sponsoree was denied his rights, as guaranteed by section 2(e) of the Canadian Bill of Rights. With regard to having a new hearing reconvened, there is no provision anywhere in the Act or Regulations for a hearing in respect of an application. The approval or refusal of an application is purely an administrative act.

Cronan v. M.M.I. 3 I.A.C. 42/84; Jolly v. M.M.I. 10 I.A.C. 51/110;  
Prata v. M.M.I. [1976] 1 S.C.R. 376; Brempong, Samuel Badu v. M.E.i.  
(F.C.A., no. A-576-79), Urie, Heald, Maguire, June 9, 1979 (not yet reported);  
Srivastava v. M.M.I. [1973] F.C. 138.

Coram: A.B. Weselak (Vice-Chairman), D. Davey and U. Benedetti Case heard:  
Toronto, June 26, 1980 Judgment pronounced: June 26, 1980 Reasons by: D. Davey  
(in English; 11 pp.), concurred in by A.B. Weselak and U. Benedetti Docket no.:  
79-9432 Counsel: S.B. Feldman, Barrister and Solicitor, for the appellant;  
J.D. Taylor, Esq., for the respondent.

---

21.7 Samdai Malik v. Minister of Employment and Immigration

SPONSORSHIP - GROUNDS OF REFUSAL - GENERAL SECTIONS - WHETHER SECTION 9(4) AND SECTION 6(1) OF THE IMMIGRATION ACT, 1976 PROPER GROUNDS FOR REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 6(1), 9(4)

Coram: D. Davy (Vice-Chairman), E. Teitelbaum and G. Tisshaw Case heard: Toronto,  
August 20, 1980 Judgment pronounced: August 20, 1980 Reasons by: D. Davey (in  
English; 8 pp.), concurred in by E. Teitelbaum and G. Tisshaw Docket no.: 80-9119  
Counsel: M. Drukarsh, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq.,  
for the respondent.

---

21.8 Mascime Mouryoussef

REFUGEE - REDETERMINATION - FEAR PERSECUTION BY REASON OF RACE AND RELIGION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant is claiming refugee status on the ground that he fears persecution by reason of his race and his religion in that he is of Jewish religion and culture living in Morocco. He claims that Jewish people are not treated like the others in that country, especially in the work force. Apparently he was beaten twice by his workmen. He testified he would not have these problems had he been an Arab.

Held: Application not allowed to proceed, the applicant is determined not to be a Convention refugee. After his departure from Morocco, the applicant spent eight months in France; he did not claim refugee status. He subsequently spent two weeks in the United States and did not claim refugee status. His conduct is not consistent with that of a person who genuinely fears persecution.

Coram: J.V. Scott (Chairman), R. Tremblay and G. Loiselle Case heard: Montreal,  
March 24, 1980 Judgment pronounced: March 24, 1980 Reasons by: J.V. Scott (in  
English; 3 pp.), concurred in by R. Tremblay and G. Loiselle Docket no.: 80-1036.

---

21.9

Angel Eduardo Jerez-Spring  
Gabriela Del Pilar Fuentealba-Munoz  
Adriana Mercedes Spring Cardenas v. Minister of Employment and Immigration

REFUGEES - DETERMINATION - MEMBERS OF A POLITICAL GROUP - CREDIBILITY - NO COMPASSIONATE AND EQUITABLE CONSIDERATIONS IN A REFUGEE CLAIM - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicants, citizens of Chile, are claiming refugee status on the ground that because they are members of a political party they fear persecution if they were to return to their country of origin. The male applicant was an active member of the Party Unitar in that he was selling used cars in order to have money for the Party or to help people get out of the country. Apparently he was detained three times by the authorities for periods from one to five months. He was also questioned during these detentions and his house was searched.

**Held:** Applications having been allowed to proceed, the applicants are determined not to be Convention refugees. There is not sufficient evidence that they come within the definition of refugees as found in the Convention. The Board sympathizes with the family but in refugee matters the Act does not give the Board discretionary power to grant special relief for humanitarian and compassionate considerations.

Re Inzunza and M.E.I. (1979) 103 D.L.R. (3d) 105 (F.C.A.).

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Montreal, May 21, 1980	<b>Judgment pronounced:</b> May 26, 1980	<b>Case heard:</b>
J.-P. Houle (in French; 9 pp.), concurred in by R. Tremblay and G. Loiselle		<b>Reasons by:</b>
<b>no.:</b> 79-1170, 79-1171, 79-1172	<b>Counsel:</b> M. Weigel, Barrister and Solicitor, for the applicants; J.R. St-Louis, Esq., for the respondent.	<b>Docket</b>

21.10

Omar Ahmad Mohammed Bakir v. Minister of Employment and Immigration

MOTION - REOPENING OF APPEAL - JURISDICTION OF BOARD

JURISDICTION OF BOARD - MOTION - REOPENING OF APPEAL - IMMIGRATION ACT, R.S.C. 1970, C. I-2, SS. 18(1)(e), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3, SS. 14, 15

The applicant filed a motion to reopen for a continuation of a hearing so that it may be determined whether the appellant herein has acquired Canadian domicile and as such is not subject to an Order of Deportation pursuant to section 18(2) of the Immigration Act, 1952 (repealed).

**Held:** Motion dismissed. The Board does not have jurisdiction to reopen an appeal in law, but simply has jurisdiction to reopen an appeal with respect to its so-called equitable jurisdiction under section 15(1) of the Immigration Appeal Board Act (repealed). The question as to the acquisition of domicile by the appellant does not fall within a decision reached by it as a result of the provisions of section 15(1) of the Immigration Appeal Board Act (repealed) but as a result of its considerations under section 14 of the said Act. The question raised in this motion is one of law and not one of the Board's so-called equitable jurisdiction under section 15(1) of the said Immigration Appeal Board Act (repealed).

Grillas v. M.M.I. [1972] S.C.R. 577, 23 D.L.R. (3d) 1; Paper Machinery Ltd. v. J.O. Ross Engineering Corp. [1934] S.C.R. 186, D.L.R. 239; Re St. Nazaire Company (1879) 12 Ch. D. 88; R. v. Development Appeal Board, Ex. p. Canadian Industries Ltd. (1969) 9 D.L.R. (3d) 727; The City of Jonquière v. Munger [1964] S.C.R. 45.

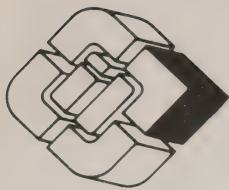
Coram: A.B. Weselak (Vice-Chairman), U. Benedetti and D. Davey      Case heard:  
Toronto, June 17, 1980      Judgment pronounced: June 17, 1980      Reasons by:  
A.B. Weselak (in English; 8 pp.), concurred in by U. Benedetti and D. Davey      Docket  
no.: 78-9045      Counsel: C.L. Campbell, Barrister and Solicitor, for the applicant;  
W.A. MacIntyre, Esq., for the respondent.

---

ISSN 0225-1620

PAH





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 22

Date January 29, 1981

CA 1  
M281  
- 252

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

© 1981

Canadian Law Information Council



## SPONSORSHIPS

22.1	79-1148	Oucelin, Franciette v. Minister of Employment and Immigration
22.2	79-1151	Zephyr, Marie-Ange v. Minister of Employment and Immigration
22.3	79-6187	Sandhu, Gurmej Singh v. Minister of Employment and Immigration
22.4	79-1226	Lapierre, H��l��ne v. Minister of Employment and Immigration
22.5	80-9260	Murray, Pamela Elizabeth v. Minister of Employment and Immigration

## REFUGEES

22.6	79-9363	Molina, Mario Angel (Riquelme) v. Minister of Employment and Immigration
22.7	80-1124	Tahir, Badaruddin Bin Mohamed (Rudy)

## DEPORTATION ORDER

22.8	79-1243	Minister of Employment and Immigration v. Mercier, Rachelle (née Philippe)
------	---------	--

## EVIDENCE

22.5	80-9260	Murray, Pamela Elizabeth v. Minister of Employment and Immigration
------	---------	--

## PROCEDURE

22.6	79-9363	Molina, Mario Angel (Riquelme) v. Minister of Employment and Immigration
------	---------	--

## APPEAL BY MINISTER

22.8	79-1243	Minister of Employment and Immigration v. Mercier, Rachelle (née Philippe)
------	---------	--

22.1 Franciette Occekin v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE FAILED TO ANSWER TRUTHFULLY THE QUESTIONS ASKED BY THE VISA OFFICER - DOCUMENTS - AUTHENTICITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 79

The appellant filed an application to sponsor into Canada the admission of her husband which application was refused on the ground that the sponsoree did not answer truthfully all questions asked by the visa officer.

**Held:** Appeal allowed on legal grounds. The fact that the sponsoree, who is illiterate, sought to hide his ignorance does not affect the authenticity of the documents produced. A marriage certificate which seems valid and an immigration form referring to permanent residence in which questions seem to have been answered truthfully constituted the record.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and E. Teitelbaum **Case heard:** Montreal, May 26, 1980 **Judgment pronounced:** May 26, 1980 **Reasons by:** R. Tremblay (in French; 3 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket no.:** 79-1148  
**Counsel:** J. Rosenfeld, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

22.2 Marie Ange Zephyr v. Minister of Employment and Immigration

SPONSORSHIP - DOUBTS ON THE FULFILMENT OF THE UNDERTAKING - ILLEGALITY OF THE LETTER OF REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(iii)

The appellant filed an application to sponsor into Canada the admission of her father which application was refused on the ground that the sponsor would not be able to fulfill the undertaking for care and support of the sponsoree. At the hearing the appellant alleged that she sponsored only the application for her father but she had been obliged to write the names of her father's dependants on the application.

**Held:** Appeal allowed on legal grounds. The letter of refusal while referring to the income needed for the care and support of seven persons also mentions that the undertaking refers to the application of the father.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and E. Teitelbaum **Case heard:** Montreal, May 28, 1980 **Judgment pronounced:** May 30, 1980 **Reasons by:** R. Tremblay (in French; 4 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket no.:** 79-1151  
**Counsel:** A.H.J. Zaitlin, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

22.3 Gurmej Singh Sandhu v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - EVIDENCE IN SUPPORT OF RELATIONSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 2

The appellant sponsored an application for admission to Canada. The application included his brother as an accompanying dependent. The brother was refused because he was not able to establish his family relationship.

Held: Appeal allowed in law. The application included a birth certificate and two school certificates verified as authentic. Plausible explanations were given for discrepancies recorded by the visa officer. The Board also received documentary evidence. The most helpful in support of a relationship were receipts issued to the appellant covering the transfer of funds to relatives in India, among whom was his brother.

Coram: C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle Case heard: Vancouver, June 24, 1980 Judgment pronounced: June 25, 1980 Reasons by: C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and G. Loiselle Docket no.: 79-6187 Counsel: D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

#### 22.4 Hélène Lapierre v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE IN CANADA NOT IN POSSESSION OF A VISA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79**

The sponsoree was present in Canada at the time a sponsorship application for landing was made in respect of him. The application was refused, inter alia, because the sponsoree did not have an immigrant visa in his possession. The sponsor attacked the validity of the refusal letter on the ground that there was no proof of lack of a visa.

Held: Appeal dismissed on legal and equitable grounds. The sponsoree testified that he had no visa. If the sponsoree had an immigrant visa holder he would have had legal status in Canada and any further steps by way of sponsorship would have been unnecessary.

Coram: J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: Montreal, July 9, 1980 Judgment pronounced: July 9, 1980 Reasons by: R. Tremblay (in French; 4 pp.), concurred in by J.-P. Houle and G. Loiselle Docket no.: 79-1226 Counsel: G. Moreau, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

#### 22.5 Pamela Elizabeth Murray v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - EVIDENCE - WEIGHT ACCORDED TO MEDICAL PROFILE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS**

**EVIDENCE - WEIGHT ACCORDED TO MEDICAL PROFILE - SPONSORSHIP - SPONSOREE WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), 79**

The appellant sponsored an application for landing made by her mother. It was refused on the ground that admission of the sponsoree would cause excessive demands on health services.

Held: Appeal allowed on equitable grounds. The appellant filed a medical report to support her submission that her mother was symptom free, in effect questioning the legality of the refusal. The authoritative statement on the sponsoree's state of health must be the doctors' medical profile prepared pursuant to section 19(1)(a) of the Act. The refusal letter is valid. The sponsor and other family members appearing with her at the appeal testified that they will give the sponsoree support both emotional and if necessary, financial. The Board was impressed by the supportive attitude of the extensive family nucleus already established here.

**Coram:** D. Davey (Vice-Chairman), G. Tisshaw and B.M. Suppa **Case heard:** Toronto, September 29, 1980 **Judgment pronounced:** September 29, 1980 **Reasons by:** G. Tisshaw (in English; 5 pp.), concurred in by D. Davey and B.M. Suppa **Docket no.:** 80-9260  
**Counsel:** J.D. Taylor, Esq., for the respondent.

---

22.6 Mario Angel (Riquelme) Molina v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - PROCEDURE - EVIDENCE - CALLING WITNESS OF OTHER PARTY - RIGHT TO RE-EXAMINE

PROCEDURE - EVIDENCE - CALLING WITNESS OF OTHER PARTY - RIGHT TO RE-EXAMINE - REFUGEE - REDETERMINATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 31(2)(a)

In support of his application for redetermination of his claim to be a Convention refugee, the applicant attached to his declaration as exhibit A, a letter of a physician. At the hearing, the physician was called as a witness by counsel for the respondent. The Board took the position that counsel for the respondent was cross-examining the physician on his letter filed as exhibit A and that counsel for the applicant was re-examining him; accordingly, counsel for the respondent was given no subsequent opportunity to question the witness. Counsel for the respondent objected and sought clarification.

**Held:** Since counsel for the respondent summoned the physician, the physician became his witness and counsel for the respondent should have been permitted to re-examine. The correct method of procedure in a situation similar to this appears to be a motion to the Court for an order requiring the other party's witness to appear and be cross-examined. The respondent has not been prejudiced by this technical error.

Weller v. O'Brien [1962] 3 All E.R. 65; R. v. Brecknock (No. 1) (1977) 31 CCC (2d) (B.C. Prov. Ct.).

**Coram:** J.V. Scott (Chairman), U. Benedetti and E. Teitelbaum **Case heard:** Toronto, April 14, June 2, 3, 1980 **Judgment pronounced:** July 9, 1980 **Reasons by:** J.V. Scott (in English; 20 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9363 **Counsel:** G. Bell, Barrister and Solicitor, for the applicant; M. Prue, Esq., for the respondent.

---

22.7 Badaruddin Bin Mohamed (Rudy) Tahir

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BECAUSE OF POLITICAL OPINION - WELL-FOUNDED FEAR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70, 71(1)

The applicant, of Malaysian origin born in Singapore, claimed he was a Convention refugee. He alleged he was the only Malaysian serving in the military in Singapore. He objected to the yearly military training required by Singapore law. He became involved in a political discussion group while in Singapore and he was detained for three days during a student demonstration.

**Held:** Application is not allowed to proceed, the applicant is not a Convention refugee. The applicant has not proven a well-founded fear of returning to his country. He is perhaps truly afraid of returning but there is no direct proof establishing that his fear is well-founded, which is an essential element of the definition "Convention refugee".

The Board has no discretionary jurisdiction in refugee applications of this nature.

Villarroel, Alfredo Nelson Salvatierra v. M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, March 23, 1979 (not yet reported); Re Inzunza and M.E.I. (1979) 103 D.L.R. (3d) 105 (F.C.A.).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
Montreal, August 21, 1980 **Judgment pronounced:** August 21, 1980 **Reasons by:**  
G. Loiselle (in French; 10 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket**  
**no.:** 80-1124.

---

## 22.8 Minister of Employment and Immigration v. Rachelle Mercier (née Philippe)

DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF A MATERIAL FACT - FAILURE TO DISCLOSE MARITAL STATUS - MARRIAGE AFTER ISSUANCE OF VISA

APPEAL BY MINISTER - DEPORTATION ORDER - PERMANENT RESIDENT - MISREPRESENTATION OF MATERIAL FACT - RIGHT OF APPEAL OF RESPONDENT ON EQUITABLE GROUNDS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 12(1), 27(1)(e), 73, 75(3) - IMMIGRATION REGULATIONS, PART I, S. 31(1)(d) (revoked)

The respondent was issued an immigrant visa and signed her immigrant record card and Immigration Form OS8 in Haiti. About two weeks thereafter, the respondent married in Haiti. Form OS8 provides that any change in marital status must be brought to the attention of the office handling the application. The respondent also signed a declaration in which she recognized an obligation to notify the Canadian embassy of any marriage occurring before departure for Canada. The respondent was admitted as a permanent resident. She failed to advise the Canadian immigration authorities in Haiti or in Canada, upon arrival, that she was married. The respondent contended that she did not understand the documents she had completed. She also argued she had become a landed immigrant when she received her visa, at which time she was not married. The Minister appealed the finding by the adjudicator that the respondent was not a person who had obtained permanent residence in Canada by reason of misrepresentation of a material fact.

**Held:** Appeal allowed and deportation order made against the respondent. Failure to disclose true marital status was misrepresentation of a material fact. There is an absolute liability imposed by law on a prospective immigrant to disclose any material change in their situation regardless of whether or not they understand this obligation or whether or not they are specifically asked the relevant question - misrepresentation may be by omission as well as by commission. A change in marital status, particularly from single to married, is a material fact which must be disclosed to the Canadian immigration authorities if it occurs before permanent resident status is actually granted.

Moreover, the respondent had not become a landed immigrant when she received a visa. A visa is no more than a stamp, or a piece of paper issued outside Canada which may give the holder a colour of right to come into Canada, either as a visitor or an immigrant, as the case may be, but no more. Their immigrant status is acquired at the port of entry.

The Board noted that pursuant to section 75(3) of the Act, the respondent has an automatic right of appeal to the Board on equitable grounds, which may be brought on by application of her counsel of record.

M.M.I. v Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522; Reid, Elrode Alfanzo v. M.E.I. (I.A.B. 78-9170), Weselak, Benedetti, Davey, February 15, 1979 (See CLIC, No. 6.20, August 24, 1979); Gyal, Otto Andrew v. M.E.I. (I.A.B. 79-9030), Weselak, Benedetti, Teitelbaum, July 10, 1979 (See CLIC, No. 11.20, January 25, 1980); Devrim, Mukaddes v. M.E.I. (I.A.B. 78-6192), Scott, Glogowski, Campbell, June 1, 1979 (See CLIC, No. 9.12, November 26, 1979).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** Montreal, September 16, 1980 **Judgment pronounced:** September 16, 1980 **Reasons by:** J.V. Scott (in English; 7 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 79-1243  
**Counsel:** J.R. St-Louis, Esq., for the appellant; D. Paquin, Barrister and Solicitor, for the respondent.

---

ISSN 0225-1620

PH

CAI  
MI 81  
- I 52

# Canadian Law Information Council Conseil canadien de la documentation juridique

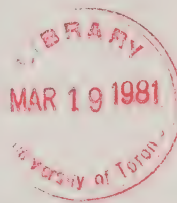
Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 23

Date February 26, 1981

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall



**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.

© 1981

Canadian Law Information Council



#### SPONSORSHIPS

23.1	79-6150	Heer, Pritam Singh v. Minister of Employment and Immigration
23.2	79-1168	Coote, Marcelle v. Minister of Employment and Immigration
23.3	79-9468	Bennett, Myrna v. Minister of Employment and Immigration
23.4	79-9144	Marshall, Herma Hyacinth v. Minister of Employment and Immigration
23.5	79-9464	Chow, Linda v. Minister of Employment and Immigration
23.6	80-1035	Jeanton, Paule Gérin-Lajoie v. Minister of Employment and Immigration

#### REFUGEES

23.7	80-6225	Aranda-Diaz, Romilio Dictmart
23.8	80-1086	Orellana Chavez, Aldo Antonio
23.9	79-1183	Azabe Nasser, Audo Regil and
	79-1184	Azabe, Marguarita Irene v. Minister of Employment and Immigration
23.10	79-9454	Washir, Harbhajan Singh and Bashir, Harbans Kaur v. Minister of Employment and Immigration
23.11	80-9296	Jastrzebska, Jolanta Grazyna
23.12	80-9376	McKnight, Jorge Ovidio

#### DEPORTATION ORDERS

23.13	79-1238	Stathopoulos, Georgios and
	79-1240	Stathopoulos, Vassiliki v. Minister of Employment and Immigration
23.14	79-9373	Dela Cruz, Melodina Agustin v. Minister of Employment and Immigration
23.15	79-9012	D'Souza, Troy Anthony v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

23.4	79-9144	Marshall, Herma Hyacinth v. Minister of Employment and Immigration
23.10	79-9454	Washir, Harbhajan Singh and Bashir, Harbans Kaur v. Minister of Employment and Immigration

#### MOTION TO PERFECT APPLICATION

23.10	79-9454	Washir, Harbhajan Singh and Bashir, Harbans Kaur v. Minister of Employment and Immigration
-------	---------	--

23.1

Pritam Singh Heer v. Minister of Employment and Immigration

SPONSORSHIP - FOREIGN ADOPTION - LEGALITY OF ADOPTION - WHETHER SPONSOREE WITHIN SPONSORABLE CLASS - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, SS. 11, 12 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2, 4(b)

The appellant sponsored an application for landing made by his adopted son. It was refused on the ground that the adoption was not legal according to Indian Law.

Held: Appeal allowed on legal grounds. The appellant testified, and was corroborated by the evidence of a distant cousin, that the adoption ceremony was carried out in 1972 according to the custom in his village. An expert witness testified that a court document dated 1977 described as a suit for the declaration of adoption was a proper document of the Indian court and that the adoption ceremony was valid for purposes of Indian law from the time of the ceremony in 1972.

C.M. Campbell (dissenting)

The expert witness testified that Indian custom requires a giving and taking of the child, an actual transfer to the adoptive parents. The appellant has been in Canada since 1947. Following the claimed adoption there was no interest in bringing his son to Canada. The sponsorship application was not made until 1978, twenty-one months after the adoptive mother entered Canada. From the evidence it is clear the sponsoree did not become part of his new family in accordance with Indian custom. An examination of the court documents reveals the decision was based on a statement filed, admitting the adoption claim. There is no indication any other evidence was considered. The court decree is a completely self-serving document incapable of verifying the claims stated therein.

Coram: C.M. Campbell (Vice-Chairman) (dissenting), F. Glogowski and U. Benedetti  
Case heard: Vancouver, June 9, 1980 Judgment pronounced: June 9, 1980 Reasons  
by: F. Glogowski (in English; 6 pp.), concurred in by U. Benedetti Dissenting  
reasons by: C.M. Campbell (in English; 5 pp.) Docket no.: 79-6150 Counsel: M.  
Elson, Barrister and Solicitor, for the appellant; C. Dickey, Esq., for the respondent.

---

23.2

Marcelle Coote v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE FAILED TO PROVE HIS ADMISSION WOULD NOT BE CONTRARY TO THE ACT - SPONSOREE FAILED TO ANSWER TRUTHFULLY QUESTIONS OF VISA OFFICER - SPONSOREE FAILED TO OBTAIN CONSENT OF MINISTER TO RETURN TO CANADA FOLLOWING DEPORTATION ORDER - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8, 9(3), 19(1)(i), 57, 79 - IMMIGRATION REGULATIONS, 1978, S. 41

The appellant sponsored the application for admission to Canada as a permanent resident made by her husband. It was refused on three grounds: (1) the sponsoree had failed to prove that his admission to Canada would not be contrary to the Act; (2) the sponsoree had failed to answer truthfully the questions put to him by a visa officer; and (3) having once been ordered deported, the sponsoree had not obtained the consent of the Minister before returning to Canada.

Held: Appeal dismissed on legal and equitable grounds.

Two grounds of refusal set out in the letter of refusal do not comply with the mandatory requirements contained in section 79 of the Act and section 41 of the Regulations. The first ground of refusal refers to section 8(1) of the Act which merely sets out the burden of proof required of a person seeking admission to Canada. This ground is invalid because it does not convey any reason why the sponsoree is prohibited from admission to Canada. The second ground stated in the letter is invalid because there is nothing to indicate what specific questions were answered untruthfully by the sponsoree. However, with respect to the third ground of refusal, section 57 of the Act requires that a person having been deported from Canada has to obtain the consent of the Minister before returning. The sponsoree failed to produce a consent from the Minister. For that reason, the Board declares that the refusal letter is in accordance with the law. Once one item is established as valid, then it is a valid refusal.

Furthermore, the Board does not find that grounds for the granting of special relief have been established. The appellant and the sponsoree did not substantiate their willingness to live as man and wife if allowed to do so. The Board was not persuaded that the appellant had an emotional commitment to her husband and there is no evidence as to his commitments to her.

Grant, Paulette Maurine v. M.E.I. (I.A.B. 79-9313), Weselak, Davey, Teitelbaum, October 30, 1979 (See CLIC, No. 12.7, February 25, 1980).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle  
**heard:** Montreal, June 10, 1980  
**Judgment pronounced:** June 11, 1980  
**Reasons by:** G. Loiselle (in English; 6 pp.), concurred in by J.-P. Houle and R. Tremblay  
**Docket no.:** 79-1168  
**Counsel:** S.B. Apel, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

23.3

Myrna Bennett v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE UNABLE OR UNWILLING TO SUPPORT HIMSELF - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(b), 79

The appellant sponsored the application for landing of her husband which was refused in that there were reasonable grounds to believe the sponsoree would be unable to support himself in Canada.

**Held:** Appeal allowed on equitable grounds. At the time she sponsored her husband's application, the appellant was receiving welfare and was unemployed. The sponsoree informed the interviewing officer when he was making application for landing that he had been unemployed since August, 1975. This is sufficient evidence to support the refusal. However, during the hearing of the appeal, a letter was filed in which the sponsoree was offered employment, the appellant testified that she had recently obtained employment, that she had a child born after her marriage to the sponsoree, and that the sponsoree indicated he would be in favour of adopting the child. The marriage appears to be a valid and subsisting marriage. It also appears that if the parties maintain their present employment they should be able to maintain themselves in a proper manner and without public assistance. Such humanitarian and compassionate grounds exist as would warrant the granting of special relief.

D. Davey (dissenting)

The facts are that the sponsoree worked in Canada, was not fired, but left his job voluntarily to return to Jamaica. His previous employer has submitted a letter indicating the sponsoree would be rehired if allowed admission to Canada. Based on these facts, the sponsoree would not be a person unable or unwilling to support himself. Precedent dictates that the Court is to base its decision on the facts as they exist when the matter is before it. I would allow the appeal in law.

Lew v. M.M.I. [1974] 2 F.C. 700; Gana v. M.M.I. [1970] S.C.R. 699; Villadiego, Elizabeth Arriola v. M.E.I. (I.A.B. 78-6173), Campbell, Weselak, Benedetti, March 30, 1979 (See CLIC, No. 8.2, October 29, 1979).

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and D. Davey (dissenting)  
**Case heard:** Toronto, July 22, 1980  
**Judgment pronounced:** July 22, 1980  
**Reasons by:** A.B. Weselak (in English; 5 pp.), concurred in by E. Teitelbaum  
**Dissenting reasons by:** D. Davey (in English; 9 pp.)  
**Docket no.:** 79-9468  
**Counsel:** M. Korman, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

23.4

Herma Hyacinth Marshall v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR MARRYING SPONSOREE PENDING APPLICATION AS FIANCÉ - APPLICABILITY OF SPONSOR'S ABILITY TO FULFIL UNDERTAKING - SPONSOREE WOULD BECOME A PUBLIC CHARGE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOREE NO LONGER WITHIN SAME CLASS AS AT TIME OF APPLICATION - SPONSOR MARRYING SPONSOREE PENDING APPLICATION AS FIANCÉ - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(b), 79 - IMMIGRATION REGULATIONS, 1978, SS. 6(1)(b)(iii), (3)

The appellant sponsored the application for admission to Canada of her fiancé. While the application was pending she married the sponsoree and later received a refusal letter in respect of him alleging that he would become a public charge if admitted to Canada and that she would be unable to fulfil an undertaking to provide for his maintenance.

**Held:** Appeal allowed on legal and equitable grounds. Although the initial sponsorship application was in respect of the appellant's fiancé, the refusal letter referred to the sponsorship application of her husband. It was a refusal of a husband and not of a fiancé and accordingly the Board had jurisdiction to hear the appeal.

The ground of refusal that the appellant would be unable to fulfil the undertaking to provide for the maintenance of her husband is an invalid ground because section 6(3) of the Regulations provides such a ground is inapplicable where the sponsoree is a spouse. With respect to the ground that he would become a public charge after his arrival in Canada, the Board finds that this is a valid ground for refusal. However, it appears to the Board that the sponsoree is capable of supporting himself and therefore this ground for refusal is not supported by the evidence and the refusal letter is invalid. The sponsoree testified that he is employed on a permanent full-time basis earning \$168 per week. Moreover, there appears to be a valid and subsisting marriage between the parties. Since the sponsoree's arrival in Canada, the appellant and her family have required no welfare assistance or payments from Mother's Allowance. There appear to be compassionate and humanitarian considerations which warrant the granting of special relief.

Cuppige, Constance v. M.M.I. (I.A.B. 76-9270), Weselak, Benedetti, Petrie, September 28, 1976; Mignott, Aneita Clementina v. M.E.I. (I.A.B. 79-9220), Weselak, Benedetti, Teitelbaum, October 17, 1979 (See CLIC, No. 10.10, December 27, 1979).

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and R. Tremblay **Case heard:** Toronto, January 15, September 9, 1980 **Judgment pronounced:** September 9, 1980  
**Reasons by:** A.B. Weselak (in English; 7 pp.), concurred in by E. Teitelbaum and R. Tremblay **Docket no.:** 79-9144 **Counsel:** B. Small, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

## 23.5

### Linda Chow v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 19(2)(a), 79

The appellant sponsored an application for permanent residence of her husband. It was refused on the ground that the sponsoree had been convicted of the following criminal offences in Hong Kong: robbery with aggravation, at age fourteen; wounding, at age eighteen; and assault occasioning actual bodily harm, at age twenty-one.

**Held:** Appeal allowed on equitable grounds. The second conviction, wounding, for which offence the sponsoree was sentenced places him in a prohibited class as he was over eighteen years of age at the time and this offence would have been considered as an indictable offence in Canada under the Criminal Code. Therefore, the refusal letter was made in accordance with the law. However, the circumstances of the case warrant the granting of special relief. The appellant, her husband and the sponsoree's sister all gave evidence at the hearing of the appeal and impressed the Board with their sincerity and affection towards each other. The marriage is bona fide, the sponsoree is a good husband, a good father for his two Canadian-born sons and is also a good supporter of the family. The appellant is well-rooted in Canada and her parents, three sisters and two brothers are Canadian citizens. Her husband's parents, three sisters and three brothers are also living in Canada and the members of both these families appear to be respectable, law-abiding citizens. The sponsoree's offences were committed in his younger years and apparently for the last six years his record is clean.

**Coram:** F. Glogowski (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:**  
Toronto, September 18, 1980 **Judgment pronounced:** September 18, 1980 **Reasons by:**  
F. Glogowski (in English; 5 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket**  
**no.:** 79-9464 **Counsel:** E.A. Benevides, Q.C., for the appellant; W.A. MacIntyre,  
Esq., for the respondent.

---

**23.6** Paule Gérin-Lajoie Jeanton v. Minister of Employment and Immigration

**SPONSORSHIP - SPONSOREE ORDERED DEPORTED - RELATIONSHIP OF SPONSOREE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), 19(2)(d), 57, 79(2) - IMMIGRATION REGULATIONS, 1978, S. 6(1)(d)**

The appellant sponsored an application for permanent residence made by her fiancé. It was refused because the visa officer was not satisfied that their marriage would take place within ninety days after admission of the sponsoree, and, having been ordered deported, the sponsoree was seeking to come into Canada without the consent of the Minister.

**Held:** Appeal allowed on equitable grounds. The appellant met her fiancé in March, 1977 and they cohabited from September of that year until his deportation in December. They later met in Spain and spent three months there. Upon her return, the appellant completed a sponsorship application for her fiancé. Six months later she withdrew it, thinking that she did not love him enough to marry him. This gesture is proof of the appellant's good faith. Realizing that she loved him after all, she revived the sponsorship. The appellant proved credible and gave sufficient evidence of her sincerity toward her fiancé and her desire to marry him within the time stipulated in the Act.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
Montreal, October 6, 1980 **Judgment pronounced:** October 6, 1980 **Reasons by:** R.  
Tremblay (in French; 4 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:**  
80-1035 **Counsel:** M.A. Kulba, Esq., for the respondent.

---

**23.7** Romilio Dictmart Aranda-Diaz

**REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70**

The applicant, a citizen of Chile, claimed to be a Convention refugee because of his political association with the Socialist party. He had entered Canada as a tourist, had overstayed his visa and was the subject of an inquiry at which stage he claimed to be a refugee.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant held no important position in the party; he was just one of the members. He was never arrested, detained or jailed by the Chilean authorities. He obtained a passport without any difficulty. Furthermore, when he arrived in Canada he did not ask the immigration officer if he could enter Canada as a political refugee. This suggests that being a refugee was not paramount in the applicant's mind as would be expected of a refugee with cause.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and E. Teitelbaum **Case heard:**  
Vancouver, July 30, 1980 **Judgment pronounced:** July 30, 1980 **Reasons by:** C.M.  
Campbell (in English; 4 pp.), concurred in by R. Tremblay and E. Teitelbaum **Docket**  
**no.:** 80-6225.

---

23.8

Aldo Antonio Orellana Chavez

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70, 71

The applicant, a citizen of Chile, claimed to be a Convention refugee by virtue of his political activities, political opinions and the political affiliations of his family.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. His individual political resistance consisted of editing and distributing two publications, one semi-clandestine and one freely circulating. He belonged to a resistance group that could reasonably have had thousands of members. He was detained on three occasions but was not tortured. He emphasized the political affiliations of his family, but their involvement amounted to one uncle's fear of using his real name in public due to his being a representative of the Allende government, and one brother being detained from time to time and cautioned to remain inside. His brother entered Canada as an immigrant and successfully sponsored the application for permanent residence of his parents. We cannot accept the contention that the applicant's fear was motivated by the political involvement of his family. His fear is not well-founded and there is no proof that the activities he calls political were perceived as such by the authorities in Chile. In view of the fact that the immediate family of the applicant is in Canada, we cannot help concluding that the refugee claim is being used by the applicant as an alternative to an application for permanent residence.

Villarroel, Alfredo Nelson Salvatierra v. M.E.I. (F.C.A., no. A-573-78), Pratte, Urie, Kelly, March 23, 1979 (not yet reported); Re Inzunza and M.E.I. (1979) 103 D.L.R. (3d) 105 (F.C.A.).

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Montreal, August 21, 1980	<b>Judgment pronounced:</b> August 21, 1980	<b>Case heard:</b>
J.-P. Houle (in French; 8 pp.), concurred in by R. Tremblay and G. Loiselle		<b>Reasons by:</b>
<b>no.:</b> 80-1086.		<b>Docket</b>

---

23.9

Audo Regil Azabe Nasser and Margarita Irene Azabe v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicants, husband and wife, are citizens of Chile. Both claim they were members of the Socialist party, active in unions representing their co-workers and were well known as supporters of President Allende. They claim that because of their visibility in the leftist movement they were fired from their jobs. The husband was tortured during a three day detention and was forced to leave his town. For four years both were harassed by secret police, beaten during searches and denied steady employment. They continued to work clandestinely against the Pinochet regime. They left Chile when advised that their arrest was imminent.

**Held:** The applications having been allowed to proceed, both applicants are determined to be Convention refugees. Although their evidence in respect of the period from the Coup d'Etat until their departure from Chile appeared to be sometimes incoherent and their fears of being executed if arrested rather exaggerated, their story as a whole was plausible. There is no doubt that both applicants were staunch militants of Allende for a long time before the Coup d'Etat. They suffered persecution after the fall of Allende, as they lost their employment, their home and were prevented from living normally because of their political convictions.

<b>Coram:</b> F. Glogowski (Vice-Chairman), J.-P. Houle and G. Loiselle Montreal, June 4, 1980	<b>Judgment pronounced:</b> August 22, 1980	<b>Case heard:</b>
F. Glogowski (in English; 3 pp.), concurred in by J.-P. Houle and G. Loiselle		<b>Reasons by:</b> F.
<b>no.:</b> 79-1183, 79-1184	<b>Counsel:</b> U. Lalanne, Barrister and Solicitor, for the applicants; M. Kulba, Esq., for the respondent.	<b>Docket</b>

23.10

Harbhajan Singh Washir and Harbans Kaur Bashir v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - MOTION TO PERFECT APPLICATION - JURISDICTION OF BOARD -  
REFUSAL BY MINISTER - DELEGATION OF AUTHORITY

MOTION TO PERFECT APPLICATION - REFUGEE - REDETERMINATION

JURISDICTION OF BOARD - REFUSAL BY MINISTER - DELEGATION OF AUTHORITY - IMMIGRATION ACT,  
1976, S.C. 1976-77, C. 52, SS. 45(5), 70 - IMMIGRATION APPEAL BOARD RULES, 1978, RULES  
49, 50

The applicants filed an application for redetermination of their claim to be Convention refugees but failed to include with the application the declaration specified in section 70(2) of the Act. The application was refused for want of perfection. The applicants moved to file the declaration and so perfect the application. The applicants also argued that the letter of refusal signed on behalf of the Minister pursuant to section 45(5) was a nullity as it was not signed by the Minister personally.

**Held:** Motion dismissed. There was non-compliance with the provisions of section 70(2) in that the declaration did not accompany the application. The provisions of section 70(1) and section 70(2) should be adhered to absolutely and constitute a prerequisite for the hearing of an application. Neglect of such prerequisites or failure to comply with them does not constitute merely a procedural or administrative irregularity, but rather a substantial defect that actually nullifies the application. Furthermore, the letter of refusal signed on behalf of the Minister pursuant to section 45(5) was not a nullity as it was not required to be signed by the Minister personally and therefore did not deprive the Board of jurisdiction to hear the application for redetermination.

De Villarreal, Veronica Maria Rodriguez v. M.E.I. (I.A.B. 79-1056), Scott, Houle, Tremblay, December 13, 1979 (See CLIC, No. 15.19, May 28, 1980); Re Inzunza and M.E.I. (1979) 103 D.L.R. (3d) 105 (F.C.A.).

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and U. Benedetti **Case heard:** Toronto, July 24, 1980 **Judgment pronounced:** September 2, 1980 **Reasons by:** A.B. Weselak (in English; 5 pp.), concurred in by D. Davey and U. Benedetti **Docket no.:** 79-9454  
**Counsel:** M.M. Green, Q.C., for the applicant; L. Williams, Esq., for the respondent.

23.11

Jolanta Grazyna Jastrzebska

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C.  
1976-77, C. 52, S. 70

The applicant, a citizen of Poland, claimed to be a Convention refugee by reason of her political beliefs. She was a medical doctor who had come to the United States on scholarship. She worked there for four years and applied for permanent residence. She visited Poland and received a warning to leave the country or face arrest. She claimed the Polish authorities knew she was seeking asylum in the United States or her colleagues were aware of the strong position she had taken against the government of Poland and this had prompted the warning.

**Held:** Application not allowed to proceed, the applicant is determined not to be a Convention refugee. Although the applicant was seeking freedom in Canada, she did not apply for political refuge on arrival but applied only after she was unsuccessful in gaining entry to the United States. The Board finds it difficult to believe the applicant was harassed and persecuted for her religious and political beliefs. It is clear that the applicant is using Canada as a stepping-stone to enter the United States where she has an apartment, furniture and an application for permanent residence to pursue.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and E. Teitelbaum  
**Toronto, September 2, 1980**      **Judgment pronounced:** September 2, 1980  
**U. Benedetti (in English; 3 pp.), concurred in by E. Teitelbaum and C.M. Campbell**  
**Docket no.:** 80-9296.      **Case heard:**  
**Reasons by:**

---

23.12

Jorge Ovidio McKnight

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE OF POLITICAL OPINIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Guatemala, claimed to be a Convention refugee by reason of his political opinions.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant's only detention for political reasons, if they may be described as such, was in 1977 when he was arrested, detained, questioned and then released. His only further detention was for breach of law of being in possession of marijuana. He states that he belonged to no political party and does not relate any evidence of political activity. He had no difficulty in obtaining his passport nor in exiting from Guatemala. On his arrival at the Toronto airport he did not claim refugee status. The applicant does not give a clear reason that he would be persecuted upon his return to Guatemala.

**Coram:** A.B. Weselak (Vice-Chairman), G. Tisshaw and B.M. Suppa      **Case heard:** Toronto, October 21, 1980      **Judgment pronounced:** October 21, 1980      **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by G. Tisshaw and B.M. Suppa      **Docket no.:** 80-9376.

---

23.13

Georgios Stathopoulos and Vassiliki Stathopoulos v.  
Minister of Employment and Immigration

DEPORTATION ORDER - MISREPRESENTATION OF MATERIAL FACT - ALL THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72(1)(b), 76(1)

The appellant husband, a citizen of Greece, had left Greece at the time his application for an immigrant visa was pending and had come to Canada to visit relatives. He was ordered deported and did not appeal the deportation order. His immigrant visa was granted about a year later and he arrived in Canada with his wife and children. Over three years later, he and his wife were ordered deported on the ground that they were granted landing by reason of misrepresentation of a material fact.

**Held:** Appeal allowed on equitable grounds, deportation orders are quashed. The husband, in good faith, thought everything was in order because immigrant visas were issued to him and his family and he took it for granted that the Canadian Embassy in Greece knew of the first deportation order that had been made against him. Although the validity of the deportation orders is not being questioned, we are of the opinion that they are valid as *mens rea* is not necessary. However, the Board has found the following extenuating circumstances: the appellants had already requested an immigrant visa when the husband first came to Canada as a visitor; the husband did not appeal the initial deportation order and returned to Canada immediately without knowing the effect a deportation order would have on his visa application; and proof of the integration of the family into Canadian society and of financial independence.

M.M.I. v. Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle  
Montreal, July 10, 1980      **Judgment pronounced:** July 10, 1980  
**Reasons by:** R. Tremblay (in French; 5 pp.), concurred in by J.-P. Houle and G. Loiselle  
**Docket no.:** 79-1238, 79-1240      **Counsel:** R. Deguire, Barrister and Solicitor, for the appellants; J.R. St-Louis, Esq., for the respondent.

---

**23.14      Melodina Agustin Dela Cruz v. Minister of Employment and Immigration**

DEPORTATION ORDER - PERMANENT RESIDENT - LANDING GRANTED SUBJECT TO CONDITION - KNOWINGLY CONTRAVENED CONDITION - WHETHER MENS REA NECESSARY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 14(2)(a), 27(1)(b), 72 - IMMIGRATION REGULATIONS, 1978, S. 23

The appellant, a citizen of the Philippines, was sponsored as a fiancée. She was granted landing subject to the condition that she marry within ninety days of her arrival in Canada. Her fiancé called off the marriage and she was ordered deported for having "knowingly contravened" the condition. She contended that she did not knowingly contravene the condition because she lacked mens rea.

**Held:** Appeal dismissed on legal and equitable grounds. "Knowingly contravened" as used in section 27(1)(b) means with simple knowledge of the contravention of such terms and conditions as were imposed as a condition of landing and does not imply mens rea or wilful non-compliance. Moreover, with no family, no major assets and holding no position of responsibility, her roots are not fixed in Canada but really remain in the Philippines. There are no considerations as would merit the granting of special relief.

R. v. Ritchie; Ex Parte Blaine (1905) 37 N.B.R. 213, 11 C.C.C. 193 (C.A.); Hinkey v. Matoba (1952) 6 W.W.R. (N.S.) 85; M.M.I. v. Brooks [1974] S.C.R. 850, 36 D.L.R. (3d) 522.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and G. Tisshaw      **Case heard:** Toronto, August 12, 1980      **Judgment pronounced:** August 12, 1980      **Reasons by:** D. Davey (in English; 8 pp.), concurred in by E. Teitelbaum and G. Tisshaw      **Docket no.:** 79-9373  
**Counsel:** R. Frost, Barrister and Solicitor, for the appellant; R. Atkinson, Barrister and Solicitor, for the respondent.

---

**23.15      Troy Anthony D'Souza v. Minister of Employment and Immigration**

DEPORTATION ORDER - PERMANENT RESIDENT - APPELLANT GRANTED LANDING AT AGE ELEVEN - INVOLUNTARY DEPARTURE WITH PARENTS - WHETHER ABANDONED PERMANENT RESIDENCE - INTENTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 24, 27(2)(e), 72

The appellant, a citizen of India, was granted landing with his family at the age of eleven. He remained in Canada for four months and then returned with his family to India. When he was fourteen, he came back to Canada with them and was granted entry as a visitor. He did not accompany his parents to India when they left about one month later. He was ordered deported on the ground that he had remained in Canada after ceasing to be a visitor. The appellant contended that he was a returning resident.

**Held:** Appeal allowed. The appellant became a permanent resident at the age of eleven. When he left Canada with his parents he was a minor and incapable in law of making a decision to leave voluntarily nor could he form the intention of making his permanent home outside Canada. The appellant testified that he never wanted to leave Canada and had always indicated a preference to return to school in Canada. He returned to Canada and established residency at the first opportunity after reaching an age where he was capable of forming a separate intent. He clearly did not fall within the category of a person who ceases to be a permanent resident as set out in section 24(1) of the Act.

Fryer v. M.M.I. 5 I.A.C. 159/166; Vincenti v. M.M.I. [1978] 1 F.C. 45; Wittkamper v. M.M.I. 6 I.A.C. 369/373; Wynia, John v. M.M.I. (I.A.B. 69-1001), Weselak, Glogowski, Byrne, August 11, 1970.

Coram: D. Davey (Vice-Chairman), E. Teitelbaum and G. Tisshaw Case heard: Toronto, August 21, 1980 Judgment pronounced: October 8, 1980 Reasons by: D. Davey (in English; 7 pp.), concurred in by E. Teitelbaum and G. Tisshaw Docket no.: 79-9012  
Counsel: G. Segal, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

ISSN 0225-1620

CAR

CAI  
M181  
- I52



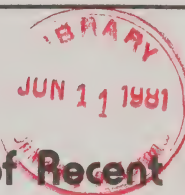
# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

Government  
Publications

No. 24

Date March 11, 1981



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

24.1	79-6001	Singh, Harinder v. Minister of Employment and Immigration
24.2	79-1216	Mercier, Marie (aka Ulvie) v. Minister of Employment and Immigration
24.3	80-6009	Sandhu, Piara Singh v. Minister of Employment and Immigration
24.4	79-6246	Jore, Pelma v. Minister of Employment and Immigration
24.5	79-6100	Van Vulpen, Henry John v. Minister of Employment and Immigration
24.6	79-9256	Valencia, Ronulfo B. v. Minister of Employment and Immigration
24.7	79-9309	Yellery, Ainslie Mervyn v. Minister of Employment and Immigration
24.8	80-9033	Dixon, Elsada B. v. Minister of Employment and Immigration

#### REFUGEES

24.9	79-6164	Silva Barra, Nelson Armando v. Minister of Employment and Immigration
24.10	79-1141	Hernandez, Angel Magana and
	79-1140	De Hernandez, Digna Gloribel Lima, v. Minister and Employment and Immigration
24.11	80-6192	Quinteros Hernandez, Leonel Eduardo
24.12	80-6224	Gebreab, Simon
24.13	80-6219	Lau, Yui Wang
24.14	80-9319	Ruz, Hector Enrique Gonzales

#### DEPORTATION ORDER

24.15	80-6094	Dmitrovic, Ninko v. Minister of Employment and Immigration
-------	---------	--

#### EVIDENCE

24.2	79-1216	Mercier, Marie (aka Ulvie) v. Minister of Employment and Immigration
24.3	80-6009	Sandhu, Piara Singh v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

24.5	79-6100	Van Vulpen, Henry John v. Minister of Employment and Immigration
------	---------	--

#### PROCEDURE

24.11	80-6192	Quinteros Hernandez, Leonel Eduardo
-------	---------	-------------------------------------

24.1

Harinder Singh v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - SPOUSE - WHETHER MARRIAGE VALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 .

The appellant sponsored the applicant for permanent residence of his wife whom he married in Canada. The validity of their marriage was contested on the ground that the appellant was a party to a valid Indian marriage at the time he married the sponsoree. The appellant contended that he did not complete his first marriage ceremony, having performed only the Anand Karaj, the First stage of the ceremony. He therefore denied the existence of a prior marriage

Held: Appeal allowed on legal and equitable grounds. A Sikh minister, presented as an expert witness at the hearing, testified that the Anand Karaj and subsequent ceremonies in themselves do not constitute a valid marriage. This only happens when the Muklawa - the final ceremony - is observed. The refusal letter is therefore not valid.

C.M. Campbell (dissenting)

The Board heard expert testimony with respect to marriage customs in India. The decision of the majority is based on the testimony of the appellant alone. In my view they have not given sufficient weight to the circumstances surrounding the arrangements in India for the marriage, the registration of the Indian marriage or the entry into Canada of the present wife of the appellant. I do not accept the possibility that the appellant spent nearly a month with his relatives in India and was unaware of what was happening until just a few days before the Indian wedding. After his marriage to the sponsoree he received a notice of application for registration of the Indian marriage in which he was requested to state any objection to the registration of the marriage. He did not do so. In consequence the marriage was registered. When she arrived in Canada, the sponsoree said she was on a two-month visit to "an uncle", whom she identified as the present appellant. She did not come to visit "her uncle" the appellant. She came to marry him. In my view, the appellant was a participant in this deceit to an extent that destroys his credibility. I find that he was married to the bride in India and was not free to marry the sponsoree in Canada.

Coram: C.M. Campbell (Vice-Chairman) (dissenting), A. B. Weselak and E. Teitelbaum  
Case heard: Calgary, January 11, 1980 Judgment pronounced: March 6, 1980 Reasons  
by: E. Teitelbaum (in English; 4 pp.), concurred in by A.B. Weselak Dissenting  
reasons by: C.M. Campbell (in English; 5 pp.) Docket no.: 79-6001  
Counsel: D.P. Pandia, Esq., for the appellant; I.D. Munn, Esq., for the respondent.

24.2

Marie (aka Ulvie) Mercier v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - EVIDENCE - PROOF OF FOREIGN DOCUMENTS - FALSE DOCUMENTS ORIGINALLY PRESENTED - CORRECTIVE DOCUMENTS INTRODUCED ON APPEAL - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

EVIDENCE - PROOF OF FOREIGN DOCUMENTS - FALSE DOCUMENTS ORIGINALLY PRESENTED - CORRECTIVE DOCUMENTS INTRODUCED ON APPEAL - SPONSORSHIP - RELATIONSHIP OF SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 111(2)(a)

The appellant sponsored an application for permanent residence made by her illegitimate son, which was refused. At the hearing of the appeal, her counsel submitted that the Board should substitute certain false documents appearing on the record, which the appellant had produced in support of her sponsorship application, with corrective documents which he sought to introduce at the hearing.

Held: Appeal allowed on equitable grounds. The refusal was valid in law. The authenticity of the documents sought to be introduced cannot be established by consent or by the evidence of one of the parties. The Board cannot take judicial notice of a document from a foreign tribunal.

However, on the whole, the testimony of the appellant was credible. We have no doubt of the existence of her relationship to the sponsoree, regardless of the omissions in the documents presented to the immigration authorities. The Board is satisfied that it is faced with a mother asking quite simply to be allowed to give her son the care and affection that every child has a right to expect.

**Coram:** J.-P. Houle (Vice-Chairman), E. Teitelbaum and G. Loiselle **Case heard:**  
Montreal, June 16, 1980 **Judgment pronounced:** June 16, 1980 **Reasons by:**  
J.-P. Houle (in French; 7 pp.), concurred in by E. Teitelbaum and G. Loiselle **Docket**  
**no.:** 79-1216 **Counsel:** P. Bellavance, Barrister and Solicitor, for the appellant;  
J.R. St-Louis, Esq., for the respondent.

---

24.3 Piara Singh Sandhy v. Minister of Employment and Immigration

SPONSORSHIP - RELATIONSHIP OF SPONSOREE - EVIDENCE - DOCUMENTS CONFLICTING - VIVA VOCE  
TESTIMONY DID NOT RESOLVE CONFLICT

EVIDENCE - DOCUMENTS CONFLICTING - VIVA VOCE TESTIMONY DID NOT RESOLVE CONFLICT -  
SPONSORSHIP - RELATIONSHIP OF SPONSOREE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52,  
SS. 9(3), 19(2)(d), 79

The appellant sponsored his father for admission to Canada as a permanent resident. The application was refused because there was no satisfactory evidence to establish a family relationship.

**Held:** Appeal dismissed. It has not been established that the sponsoree is a member of the family class. When he applied for permanent residence, the sponsor showed his birth date to be April 27, 1951. He submitted two school leaving certificates confirming the birth date. However, a death certificate shows his mother died on January 13, 1951. She could not have given birth to a son three months after her death. Likewise, his parentage by the sponsoree is left in doubt. He submitted a birth certificate for one Gurdawar Singh, son of the sponsoree, claiming that Gurdawar was his birth name but he provided no evidence to substantiate this claim. The Board does not accept this as the birth certificate of the appellant not only because it is not in the name accepted for the appellant but more particularly because it would make him three years older than he has claimed to be throughout his life. The documents submitted are in conflict and do not establish the sponsoree to be the father of the appellant. Viva voce testimony given at the hearing did not assist the Board in resolving this difficulty.

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and G. Loiselle **Case heard:**  
Vancouver, June 26, 1980 **Judgment pronounced:** June 26, 1980 **Reasons by:**  
C.M. Campbell (in English; 3 pp.), concurred in by F. Glogowski and G. Loiselle  
**Docket no.:** 80-6009 **Counsel:** D. Vick, Barrister and Solicitor, for the appellant;  
I.D. Munn, Esq., for the respondent.

---

24.4 Pelma Jore v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF SPONSOREE WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES -  
REFUSAL BASED ON OPINION OF ONE MEDICAL OFFICER - MEDICAL DOCUMENTS NOT INCLUDED IN  
RECORD - WHETHER REFUSAL VALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.  
19(1)(a)(ii), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant sponsored an application for admission to Canada as permanent residents for her father and his family, among whom was the appellant's brother. It was refused on the ground that her brother had a condition that would cause excessive demands on health services and he was therefore inadmissible. The record included two letters of opinion by one medical officer as to the condition of the brother. The medical documents which formed the basis for the refusal were not part of the record.

**Held:** Appeal dismissed on legal and equitable grounds. The refusal letter makes clear the reason for that refusal and the testimony given by the appellant and her aunt satisfies me the refusal was in accordance with the law.

E. Teitelbaum (dissenting)

The respondent relied on two letters written by the same medical officer to substantiate his view that the legal requirements of a valid refusal had been met. In my view, the refusal is not in accordance with the law because it does not comply with paragraph 19(1)(a)(ii) of the Act which requires the opinion of a medical officer to be concurred in by at least one other medical officer. Furthermore, the record does not contain a medical Notification and Record Form upon which the refusal letter would be based.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and E. Teitelbaum (dissenting)  
**Case heard:** Edmonton, July 30, 1980      **Judgment pronounced:** July 30, 1980      **Reasons**  
**by:** C.M. Campbell (in English; 4 pp.), concurred in by R. Tremblay      **Dissenting**  
**Reasons by:** E. Teitelbaum (in English; 3 pp.)      **Docket no.:** 79-6246      **Counsel:**  
C.M. Hanbury, Esq., for the respondent.

---

#### 24.5      Henry John Van Vulpen v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF INADMISSIBLE CLASS - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - JURISDICTION OF BOARD - MEMBER OF THE FAMILY CLASS - SPOUSE - SEX CHANGE PRIOR TO MARRIAGE

JURISDICTION OF BOARD - MEMBER OF THE FAMILY CLASS - SPOUSE - SEX CHANGE PRIOR TO MARRIAGE - SPONSORSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 59, 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4

The appellant sponsored an application for permanent residence of his wife. It was refused on the ground that she was within an inadmissible class, having been convicted of a criminal offence, namely, wilful damage in excess of \$50. Although it was not set out as a ground of refusal in the refusal letter, counsel for the respondent drew the Board's attention to the fact that the sponsoree had undergone a sex change prior to her marriage to the sponsor. He submitted that the sponsoree was born a male, and although she had had a sex operation, she was still a male; her marriage was a nullity since a valid and legal marriage cannot exist between two male persons; the relationship of man and wife did not exist between the sponsor and sponsoree; and the sponsoree, therefore, was not a spouse as defined in the Regulations.

**Held:** Appeal dismissed on legal grounds. The sponsoree falls within the provisions of paragraph 19(1)(c) of the Act and the ground in the refusal letter is valid.

Following Corbett v. Corbett and North et al. v. Matheson the Board finds that the sponsoree was not a woman at the date of the ceremony of marriage but was at all times a male and therefore cannot be classed as the spouse of the sponsor.

An essential of section 79 is that an application for landing must be made by a member of the family class and on appeal from a refusal this element is squarely and exclusively within the Board's jurisdiction. This tribunal is not called upon to annul a marriage; it is simply finding that a sponsoree is or is not admissible as a member of the family class as defined in the Regulations. The sponsoree not being a member of the family class, the right of appeal based on equity falls to the ground.

E. Teitelbaum (dissenting)

It is on the question of the Board's application of its equitable jurisdiction that I differ from my colleagues. A registered certificate of marriage has been filed. This is *prima facie* proof of a valid marriage. The sponsoree was married as a woman and gave evidence that she had had an operation to change her gender from male to female approximately twenty years ago. She is now a woman, according to her evidence. It seems to me that it was not open to this board, in the absence of modern medical evidence, to presume the gender of the parties before us. The definition of spouse in the Regulations reads: "... the person recognized under the laws of any province of Canada as the husband or wife of that person." This marriage has been recognized by the Province of Nova Scotia and until proven otherwise, the appellant and the sponsoree are husband and wife.

It benefits no one to keep these two people apart. The appellant and the sponsoree have established a close relationship. The appeal should be allowed on compassionate grounds.

Corbett v. Corbett [1970] All E.R. 33; North et al. v. Matheson (1974) 20 R.F.L. 112; Hyde v. Hyde and Woodmansee v. Woodmansee (1866) L.R.1 P. & D. 130; in re Anonymous (1968) 292 N.Y.S. 2d 834 (N.Y. City Civ. Ct.); Garcia, Elsa v. M.E.I. (I.A.B. 79-9013), Weselak, Benedetti, Teitelbaum, October 18, 1979 (See CLIC, No. 12.6, February 25, 1980).

Coram: C.M. Campbell (Vice-Chairman), A.B. Weselak and E. Teitelbaum (dissenting)  
Case heard: Edmonton, January 8, 1980 Judgment pronounced: August 29, 1980  
Reasons by: A.B. Weselak (in English; 12 pp.), concurred in by C.M. Campbell  
Dissenting reasons by: E. Teitelbaum (in English; 4 pp.) Docket no.: 79-6100  
Counsel: A.M. Zariski, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

#### 24.6 Ronulfo B. Valencia v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREES WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a), 79(2)(b)

The appellant sponsored the application for permanent residence of his father, mother and sister. It was refused because his parents failed to meet the health standards in the Act. The appeal was based solely on compassionate or humanitarian considerations.

Held: Appeal dismissed. It is an undisputed fact that the appellant's parents are ill. His father has a condition which does not respond easily to treatment and his mother has diabetes. The appellant is willing to pay health insurance premiums for his parents. However, the cost of the premiums would in no way reflect the cost of the type of medical care his father would likely require. The financial burden that would be placed on Canadian society is too great. The appellant's parents have family residing, as they are, in the Philippines. They would also continue to receive the financial support now forthcoming from their children in Canada.

Coram: D. Davey (Vice-Chairman), E. Teitelbaum and R. Tremblay Case heard: Toronto, September 11, 1980 Judgment pronounced: September 11, 1980 Reasons by: E. Teitelbaum (in English; 4 pp.), concurred in by D. Davey and R. Tremblay Docket no.: 79-9256 Counsel: J.D. Taylor, Esq., for the respondent.

---

#### 24.7 Ainslie Mervyn Yellery v. Minister of Employment and immigration

SPONSORSHIP - SPONSOREE CONVICTED OF A CRIMINAL OFFENCE - MANSLAUGHTER - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 79

The appellant sponsored an application for landing in respect of his father, a native of Guyana. It was refused on the ground that the sponsoree had been convicted of the offence of manslaughter.

**Held:** Appeal allowed on equitable grounds. The Board found the sponsoree to be a credible witness. There is no doubt in the mind of the Board that he is not a criminally minded person. Although he admits that he shot his wife, it would appear that it was an accident and not an intentional crime. The sponsoree has no immediate family in Guyana. He is gainfully employed and his employment appears to be permanent. He is well regarded in the local parish according to the testimony of his pastor and has been elected a member of the board of the Anglican Church there.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and G. Tisshaw  
**Judgment pronounced:** October 6, 1980  
**Case heard:** Toronto, October 6, 1980  
**Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by U. Benedetti and G. Tisshaw  
**Docket no.:** 79-9309  
**Counsel:** J. Wahl, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

**24.8      Elsada B. Dixon v. Minister of Employment and Immigration**

SPONSORSHIP - DAUGHTER UNDER TWENTY-ONE YEARS OF AGE - SPONSORSHIP APPLICATION MADE WHEN DAUGHTER UNDER TWENTY-ONE - APPLICATION FOR PERMANENT RESIDENCE MADE WHEN DAUGHTER OVER TWENTY-ONE - WHETHER MEMBER OF THE FAMILY CLASS - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 6(1), 8(1), 9(3), 19(1)(b), 79 - IMMIGRATION REGULATIONS, 1978, S. 4

The appellant sponsored an application for permanent residence made by her daughter. It was refused on several grounds and she appealed its refusal.

**Held:** Appeal dismissed. Although the sponsoree was under twenty-one years of age at the time her mother's sponsorship application was made, she was over twenty-one at the time she made her application for permanent residence. She is therefore not eligible for sponsorship as a member of the family class. Furthermore when the sponsoree is not within the family class, the Board is unable to exercise its jurisdiction with respect to its discretionary powers as to do so would expand beyond the members of the family class.

Wint, Olga Desrene v. M.E.I. (I.A.B. 79-9248), Davey, Weselak, Teitelbaum, November 1, 1979 (See CLIC, No. 12.8, February 25, 1980).

**Coram:** A.B. Weselak (Vice-Chairman), G. Tisshaw and B.M. Suppa  
**Judgment pronounced:** October 22, 1980  
**Case heard:** Toronto, October 22, 1980  
**Reasons by:** G. Tisshaw (in English; 5 pp.), concurred in by A.B. Weselak and B.M. Suppa  
**Docket no.:** 80-9033  
**Counsel:** S.K. Ramkissoon, Esq., for the appellant; L. Williams, Esq., for the respondent.

---

**24.9      Nelson Armando Silva Barra v. Minister of Employment and Immigration**

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - CREDIBILITY - APPLICANT MADE CONTRARY STATEMENTS ON SEPARATE OCCASIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Chile, based his claim to refugee status on his Communist political affiliations.

**Held:** Application having been allowed to proceed, applicant is determined not to be a Convention refugee. Was the applicant involved in politics or did he express such vocal opposition to the government as to brand him a Communist; did he quit university because his help was required at home or because he was driven out of the university due to the politics of his father; were the headquarters of the Communist party in the house of his grandmother or in the home of one of his uncles? -- in each instance the applicant has made contrary statements on separate occasions, and when questioned about his communistic uncles and aunts his separate replies are widely divergent. It is the finding of the Board that the applicant is a man without credibility. The Board cannot accept his testimony.

**Coram:** C.M. Campbell (Vice-Chairman), A.B. Weselak and E. Teitelbaum  
**Judgment pronounced:** January 10, 1980  
**Case heard:** Edmonton, January 9, 1980  
**Reasons by:** C.M. Campbell (in English; 7 pp.), concurred in by A.B. Weselak and E. Teitelbaum  
**Docket no.:** 79-6164  
**Counsel:** J.J. Donahoe, Barrister and Solicitor, for the applicant; I.D. Munn, Esq., for the respondent.

---

24.10

Angel Magana Hernandez

Digna Gloribel Lima De Hernandez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION BY REASON OF POLITICAL OPINIONS - STORY BIZARRE BUT APPLICANTS CREDIBLE - NO OTHER COMPARATIVELY RATIONAL EXPLANATION EXCEPT THAT EVENTS WERE POLITICALLY ORIENTED - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicants, husband and wife, are citizens of El Salvador. They claim to be Convention refugees by reason of their political opinions. The husband worked as an agronomist for the government. His duties brought him into contact with poor peasants. He encouraged the peasants to form associations and cooperatives. In addition, the applicants were open supporters of the Christian Democrat candidate who was defeated in the February, 1977 election. The husband, however, continued to express his political opinions to the farmers. In December, 1977 his wife was kidnapped and interrogated about her political convictions and those of her husband. After spending several days in captivity, she was told to leave the country within one month or she would be killed. She obtained a passport within the month, arrived in Canada and was admitted as a visitor. Her husband remained in El Salvador for approximately one month, continuing in his government employment. When he arrived in Canada with his children, the entire family claimed refugee status.

**Held:** Applications having been allowed to proceed, applicants are determined to be Convention refugees. Bizarre as this story is, the applicants were entirely credible witnesses. They testified that they believed the kidnapping incident to have been engineered by ORDEN, a military wing of the government that terrorizes and eliminates government opposition. There seems to be no other what may be called comparatively rational explanation of the kidnapping except that it was politically oriented and carried out by an arm of the government in El Salvador, presumably in order to force the applicants to leave the country. In this context, it is significant that they had no trouble obtaining their passports or leaving El Salvador.

**Coram:** J.V. Scott (Chairman), G. Loiselle and R. Tremblay  
**Judgment pronounced:** April 30, 1980  
**Case heard:** Montreal, April, 28 and 29, 1980  
**Reasons by:** J.V. Scott (in English; 8 pp.), concurred in by G. Loiselle and R. Tremblay  
**Docket nos.:** 79-1140 and 79-1141  
**Counsel:** J.P. Weldon, Barrister and Solicitor, for the applicants; M.A. Kulba, Esq., for the respondent.

---

24.11

Leonel Eduardo Quinteros Hernandez

REFUGEE - REDETERMINATION - PROCEDURE - NATURAL JUSTICE - RIGHT TO HEARING AND DISCLOSURE

PROCEDURE - NATURAL JUSTICE - RIGHT TO HEARING AND DISCLOSURE - REFUGEE -  
REDETERMINATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70, 71

The applicant, who claimed to be a Convention refugee, contended that denial of a hearing with full disclosure at the stage during which the Board decides if an application will be allowed to proceed was in breach of the rules of natural justice.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. Section 70 of the Act affords the applicant the opportunity to making his case for acceptance as a refugee and sets out the procedure to be followed. Up to the point where an application is allowed to proceed, this is not an adversary process. There is no case against the applicant. The duty of the Board under s. 71 is clearly to determine if there shall be a hearing. It was surely not the intention of Parliament that a hearing be called to make that decision. Furthermore, the Board need not order production of all evidence considered by the Refugee Status Advisory Committee. The reasons for refusal given by the Minister relate only to the evidence included in the statement under oath made by the applicant. That document is part of the record.

Martineau v. Matsqui Institution Disciplinary Board (No. 2) (1979) 106 D.L.R. (3d) 385 (S.C.C.).

**Coram:** C.M. Campbell (Vice-Chairman), F. Glogowski and U. Benedetti  
**Judgment pronounced:** June 13, 1980  
**Case heard:** Vancouver, June 13, 1980  
**Reasons by:** C.M. Campbell (in English; 6 pp.), concurred in by F. Glogowski and U. Benedetti  
**Docket no.:** 80-6192.

---

24.12

Simon Gebreab

REFUGEE - REDETERMINATION - FEAR PERSECUTION BY REASON OF RACE - ACCEPTED AS A REFUGEE  
IN A THIRD COUNTRY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, an Eritrean born in Ethiopia, claims to be a Convention refugee. As a result of the conflict between the Eritreans and Ethiopians, he fled Ethiopia in 1975 and was accepted as a United Nations Convention refugee in Kenya. He lived in Kenya for over two years and then came to Canada as a student. He expressed fear that he may be sought by the Ethiopian military because he was a member of an Eritrean student association and because, having been shot at by the natives, he abandoned his post in a mandatory national campaign for the promotion of education and land reform.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant lived in Nairobi, 700 miles from the Ethiopian border, for over two years without incident. Moreover, recognizing that he has been granted the status of Convention refugee in Kenya and is free to return there, the Board, following the decision of Boun-Leua, determines him not to be a Convention refugee in Canada as described in section 2(1) of the Act.

Boun-Leua, Kammy v. M.E.I. (F.C.A., no. A-578-79), Urie, Ryan, MacKay, June 17, 1980 (not yet reported).

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and D. Davey  
**Judgment pronounced:** July 24, 1980  
**Case heard:** Vancouver, July 24, 1980  
**Reasons by:** C.M. Campbell (in English; 3pp.), concurred in by U. Benedetti and D. Davey  
**Docket no.:** 80-6224.

---

24.13

Yui Wang Lau

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION FOR POLITICAL OPINIONS - POLITICAL ACTIVITIES MOTIVATED BY MERCENARY CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, born in China, claimed to be a Convention refugee by reason of his political opinions and activities. While he was living in Taiwan, he became involved with a Colonel Lam who was attached to the Taiwanese Intelligence Services. He followed Lam to Hong Kong and obtained financial assistance from him in return for distributing subversive propaganda in Mainland China and gathering information for the Taiwanese Intelligence Services.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant hired himself out as an underground agent operating for the Taiwanese in Mainland China when he needed money and for no other reason and any fear resulting from this activity is not covered in the definition of refugee as set out in section 2(1) of the Act. His motivation was mercenary. It was not in any way either philosophical or political.

**Coram:** C.M. Campbell (Vice-Chairman), E. Benedetti and D. Davey **Case heard:**  
Vancouver, July 24, 1980 **Judgment pronounced:** July 24, 1980 **Reasons by:**  
C.M. Campbell (in English; 2 pp.), concurred in by U. Benedetti and D. Davey **Docket**  
**no.:** 80-6219.

---

24.14

Hector Enrique Gonzales Ruz

REFUGEE - REDETERMINATION - MEMBER OF A POLITICAL GROUP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Chile, claimed to be a Convention refugee by reason of his membership in a political group, the Socialist party. He related several incidents of arrest and detention by the military. His employment involved selling merchandise from door-to-door and he complained the authorities did not let him work in peace.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The Board notes that numerous arrests were only for a period of a few hours and they all had to do with the applicant's authority to sell his merchandise in the streets from door-to-door. His political activities were very restricted and unlikely to cause him all the problems that he had later on. Although harassed by the authorities and arrested a dozen times, the applicant never attempted to find some other form of employment.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and C.M. Campbell **Case heard:**  
Toronto, September 2, 1980 **Judgment pronounced:** September 2, 1980 **Reasons by:**  
U. Benedetti (in English; 5 pp.), concurred in by A.B. Weselak and C.M. Campbell  
**Docket no.:** 80-9319.

---

24.15

Ninko Dmitrovic v. Minister of Employment and Immigration

DEPORTATION ORDER - APPELLANT REMAINING IN CANADA AFTER CEASING TO BE A VISITOR - SUBSEQUENTLY DETERMINED TO BE CONVENTION REFUGEE - WHETHER LAWFULLY IN CANADA - WHETHER RIGHT TO REMAIN IN CANADA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(g), 4(2)(b), 27(2)(e), 37, 55, 72

The appellant, born in Yugoslavia, had been granted refugee status in France, where he lived temporarily before entering Canada as a visitor. Prior to the expiry of his visitor's visa, he claimed refugee status but was told he must either leave the country to make that claim or overstay his visitor's visa and make the claim at the resulting inquiry. He accordingly allowed his visitor's status to expire. At the inquiry, he was found to be a person who had remained in Canada after ceasing to be a visitor. The appellant then claimed to be a Convention refugee and the hearing was adjourned. The Minister determined him to be a Convention refugee. The inquiry was resumed and the adjudicator issued a deportation order on the ground that the appellant had entered Canada as a visitor and had remained after ceasing to be a visitor.

**Held:** Appeal allowed on legal grounds. When the appellant entered Canada, he brought with him a valid visitor's visa and was granted the status of visitor. The Minister then determined him to be a Convention refugee on the basis of his claim. The decision is retrospective. It is clear the appellant was a Convention refugee when he entered the country and the process has simply confirmed that circumstance. In accordance with section 4(2)(b) of the Act, the appellant was a Convention refugee lawfully in Canada with the right to remain in Canada. This right continues so long as he remains a Convention refugee and is free of the prohibitions listed in section 4(2)(b). Section 27(2)(e) of the Act, remaining in Canada after ceasing to be a visitor, is not one of those prohibitions.

Counsel for the respondent argued that the appellant has refugee status in France and can return there. This is not an issue in the instant case. In any event, it is not a ground for deportation.

F. Glogowski (dissenting)

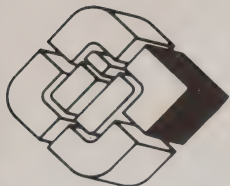
The adjudicator had no choice but, on the evidence before him, to find that the appellant was a person who failed to depart upon expiry of his visitor's visa. He had no alternative but to declare that the appellant, although being a Convention refugee, was not "lawfully" in Canada and therefore had no right to remain in Canada.

Boun-Leua, Kammy v. M.E.I. (F.C.A., No. A-578-79), Urie, Ryan, MacKay, June 17, 1980 (not yet reported); Major, Laszlo v. M.E.I. (I.A.B. 80-6053), Campbell, Hlady, Howard, November 10, 1980.

**Coram:** C.M. Campbell (Vice-Chairman), G. Loiselle and F. Glogowski (dissenting)  
**Case heard:** Vancouver, June 23, 1980      **Judgment pronounced:** September 17, 1980

**Reasons by:** C.M. Campbell (in English; 11 pp.), concurred in by G. Loiselle  
**Dissenting reasons by:** F. Glogowski (in English; 5 pp.)      **Docket no.:** 80-6094

**Counsel:** D. McCrea, Barrister and Solicitor, for the appellant; T.D. Munn, Esq., for the respondent.

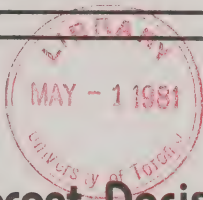


# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 25

Date April 20, 1981



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

25.1	79-1198	Bruneau-Budwal, Thérèse v. Minister of Employment and Immigration
25.2	79-9378	Johnson, Barbara Patricia v. Minister of Employment and Immigration
25.3	80-9088	Menicucci, Mariuccia v. Minister of Employment and Immigration
25.4	79-9322	Grant, Ethel v. Minister of Employment and Immigration
25.5	80-9027	Moulic, Teresita Carrera v. Minister of Employment and Immigration
25.6	79-9403	Graham, Kathleen Elfreda v. Minister of Employment and Immigration
25.7	79-9429	Deol, Charanjit v. Minister of Employment and Immigration
25.8	79-9357	Khan, Denise Darlene v. Minister of Employment and Immigration

#### REFUGEES

25.9	80-6223	Khan, Omar (aka Pirthipal Singh)
25.10	80-9363	Galleguillos (Mardones), Milton Ricardo

#### DEPORTATION ORDERS

25.11	80-3020	Harb, Yosra Khalil v. Minister of Employment and Immigration
25.12	79-9471	D'Souza, Grace Euphrosyne v. Minister of Employment and Immigration
	79-9461	D'Souza, Mohan Eugene v. Minister of Employment and Immigration
25.13	80-9132	Virgo, Wayne Hoyt v. Minister of Employment and Immigration
25.14	80-9035	Chaudhry, Iqbal Akhtar v. Minister of Employment and Immigration

#### REMOVAL ORDER

25.15	80-9218	Medeiros, Manuel Custodio v. Minister of Employment and Immigration
-------	---------	---

#### EVIDENCE

25.1	79-1198	Bruneau-Budwal, Thérèse v. Minister of Employment and Immigration
25.5	80-9027	Moulic, Teresita Carrera v. Minister of Employment and Immigration

#### PROCEDURE

25.3	80-9088	Menicucci, Mariuccia v. Minister of Employment and Immigration
------	---------	--

#### JURISDICTION OF BOARD

25.10	80-9363	Galleguillos (Mardones), Milton Ricardo
-------	---------	---

25.1 Thérèse Bruneau-Budwal v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE SEEKING TO COME INTO CANADA WITHOUT CONSENT OF MINISTER - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - EVIDENCE - MEMORANDUM PREPARED BY OFFICIALS OF IMMIGRATION DEPARTMENT - WHETHER BOARD SHOULD PROPERLY CONSIDER SUCH EVIDENCE

EVIDENCE - SPONSORSHIP - MEMORANDUM PREPARED BY OFFICIALS OF IMMIGRATION DEPARTMENT - WHETHER BOARD SHOULD PROPERLY CONSIDER SUCH EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), 57, 79

The appellant sponsored an application for permanent residence made by her spouse, which was refused because her spouse, having been deported from Canada was seeking to come into Canada without having obtained the consent of the Minister. At the hearing of the appeal, the Board had before it a memorandum on record prepared by officials of the Immigration Department. The question arose as to whether the Board should properly consider such evidence.

**Held:** Appeal allowed on equitable grounds. The appellant testified that she had entered into the marriage of her own free will and wished to live with her spouse as man and wife. With respect to the propriety of considering the memorandum on record, it would seem to me to be difficult to ignore completely such memoranda since they are an integral part of the record and in many cases, they are presented to the Minister as notices that could influence, in one way or another, the ultimate decision of the Minister.

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loisel	<b>Case heard:</b>
Montreal, August 18, 1980	<b>Judgment pronounced:</b> August 18, 1980
J.-P. Houle (in French; 7 pp.), concurred in by R. Tremblay and G. Loisel	<b>Reasons by:</b>
<b>no.:</b> 79-1198	<b>Docket:</b>
<b>Counsel:</b> H. Frumkin, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.	

---

25.2 Barbara Patricia Johnson v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE NOT MAINLY DEPENDANT UPON HER MOTHER FOR SUPPORT - DEFINITION OF "FAMILY" - SPONSOREE UNABLE TO SUPPORT HERSELF AND THOSE DEPENDANT UPON HER - DEFINITION OF "DEPENDANT" - WHETHER DEFINITION INCLUDES DEPENDANTS OF DEPENDANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 3, 6(1), 19(1)(b), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(c), 6(1)

The appellant sponsored the applications for permanent residence in Canada of her mother, brothers and sister. Her sister's application indicated she was under twenty-one at the date of her application and unmarried with two children. This application was refused on the grounds that the appellant's sister was not mainly dependent upon her mother for support as required by the definition of "family" in section 2(1) of the Act and also by virtue of the fact that there were reasonable grounds to believe she would be unable to support herself and those persons dependent upon her for support.

**Held:** Appeal dismissed on legal and equitable grounds. The first ground of refusal is not valid. The definition of dependant is given in section 2(1) of the Regulations. The appellant's sister is an unmarried daughter under twenty-one years of age at the time of making her application for permanent residence, and is therefore an accompanying dependant of her mother. The present Immigration Act provides for the appellant's sister to come as an accompanying dependant of her mother. It makes no provision for her two children. This separation of a mother from her children is in direct contravention of the stated objectives set out in section 3 of the Act.

In considering the validity of the ground for refusal set out in section 19(1)(b) of the Act, we are looking at the ability of the appellant's sister to provide for her family of two infants as well as herself. Given her poor work history, her lack of skills and her family responsibilities, she would be extremely disadvantaged in the work force. There was no indication by the sponsor that she would provide permanent support for her sister and her two children over an extended period of time. The Board concludes there are reasonable grounds to believe that she will be unable or unwilling to support herself and those persons who are dependent on her for care and support.

Moreover, the Board could not find sufficient humanitarian and compassionate considerations to allow the appeal on these grounds. The appellant's sister is united with her children in Jamaica living in a larger family unit with an older sister and aunts, receiving support from several members of the family. There are no compelling humanitarian and compassionate considerations to justify a Board decision which would cause the separation of a mother from her two small children, ages four and one, for an indefinite period while she attempts to settle and establish herself in Canada.

Grant, Ethel v. M.E.I. (I.A.B. 79-9322), Weselak, Tisshaw, Suppa, October 21, 1980; Cardoni, Orazio v. M.E.I. (I.A.B. 77-9453), Weselak, Petrie, Jaskula, March 6, 1978 (See CLIC, No. 1.16, March 20, 1979).

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and G. Tisshaw  
Toronto, November 18, 1980  
**Judgment pronounced:** December 16, 1980  
**Case heard:**  
**Reasons by:**  
D. Davey (in English; 6 pp.), concurred in by U. Benedetti and G. Tisshaw  
**Docket no.:** 79-9378  
**Counsel:** J.A. House, Barrister and Solicitor, for the appellant;  
W.A. MacIntyre, Esq., for the respondent.

---

25.3 Mariuccia Menicucci v. Minister of Employment and Immigration

SPONSORSHIP - QUESTION OF JURISDICTION RAISED - PROCEDURE

PROCEDURE - SPONSORSHIP - QUESTION OF JURISDICTION RAISED - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9, 79

The appellant had filed a form entitled "Sponsorship of application by a member of family class and undertaking of assistance" which in its body indicated that at that time the sponsoree was resident in Canada. Counsel for the respondent submitted that an appeal did not lie to the Board because the sponsoree had not applied for an immigrant visa abroad. In the course of his argument at the hearing, counsel for the appellant submitted that if a question of jurisdiction, such as that alleged by counsel for the respondent, was to be raised before the Board it should be by way of motion supported by an affidavit evidencing the facts upon which the motion was based.

**Held:** Appeal dismissed. The Board rejects the submission of counsel for the appellant as the Board must, on its own initiative, find its jurisdiction within the record of appeal.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum  
Toronto, September 3, 1980  
**Judgment pronounced:** October 7, 1980  
**Case heard:**  
**Reasons by:**  
A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and E. Teitelbaum  
**Docket no.:** 80-9088  
**Counsel:** R. Boraks, Barrister and Solicitor, for the appellant;  
W.A. MacIntyre, Esq., for the respondent.

---

25.4 Ethel Grant v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - NOT MAINLY DEPENDENT ON SPONSOR FOR SUPPORT - DEFINITION OF FAMILY, MEMBER OF THE FAMILY CLASS - WHETHER PROPER DEFINITION USED - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 6(1), 79

The application for permanent residence of the appellant's son was refused on the basis that he was not mainly dependent upon the appellant (sponsor) for support as required within the definition of "family" in section 2(1) of the Act.

**Held:** Appeal allowed. The proper definition which should be considered in this instance is that of "member of the family class" as defined in section 2(1) of the Act. There is no reference made to dependency in this definition. The notice of refusal is therefore invalid.

Moreover, such compassionate and humanitarian considerations exist as to warrant the granting of special relief. The appellant testified that she had seven children all of whom are in Canada, except for the sponsoree who is in Jamaica. A mother/son relationship still exists between the two of them.

**Coram:** A.B. Weselak (Vice-Chairman), G. Tisshaw and B.M. Suppa **Case heard:** Toronto, October 21, 1980 **Judgment pronounced:** October 21, 1980 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by G. Tisshaw and B.M. Suppa **Docket no.:** 79-9322  
**Counsel:** D.M. Greenbaum, Q.C., for the appellant; L. Williams, Esq., for the respondent.

---

25.5 Teresita Carrera Moulic v. Minister of Employment and Immigration

SPONSORSHIP - GROUNDS OF REFUSAL - REFUSAL IN GENERAL TERMS - RELATIONSHIP OF SPONSOREES - EVIDENCE - OFFICIAL DOCUMENTS CONFLICTING

EVIDENCE - OFFICIAL DOCUMENTS CONFLICTING - SPONSORSHIP - RELATIONSHIP OF SPONSOREES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79

The appellant sponsored the application for permanent residence of her parents and accompanying family members. It was refused on the basis that the information submitted failed to substantiate the appellant's relationship to her parents. The appellant was born in a small village in the Philippines. Filed in the record was a certificate of baptism showing that she was the legitimate child of Andres Carrera and Genoveva Santiago. On his Form OS8, the sponsoree claiming to be the appellant's father lists these same individuals as his own parents. The appellant testified that when she was born a sickly child her parents followed the local custom of selling her to drive away evil spirits. She claimed to have been sold to her grandparents. While she was still residing there, a court in the Philippines granted the appellant's petition to amend her birth records to indicate the sponsorees as being her parents.

At the hearing, a preliminary question regarding the validity of the refusal was raised, in that the refusal did not refer to a specific section of the Immigration Act, 1976.

**Held:** Appeal dismissed. While the refusal letter does not quote a specific section of the Act, it is clear that the sponsor knows the case she has to meet, that is, that she has to establish the validity of her relationship to her claimed parents.

The appellant seemed a credible witness and her petition to change her birth records was made before she left the Philippines and years before her sponsorship application. On the other hand, the Board has the application for permanent residence of the sponsoree who claims to be her father, showing that he is an educated man with fifteen years of schooling. A man of education is usually less susceptible to the superstitions of the locality. The church document states that the sponsor is the legitimate daughter of the persons she now alleges to be her grandparents. Would the Roman Catholic parish falsify their records in support of a local superstition? Furthermore, the court in the Philippines did not deal with who were the appellant's legitimate parents. The court agreed to the change in the records on the basis that there was no prejudice to a third party.

Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Glogowski, Houle, Tremblay, February 7, 1979 (See CLIC, No. 4.13, June 29, 1979); Singh, Gurdev v. M.E.I. (I.A.B. 79-9127), Weselak, Benedetti, Teitelbaum, September 10, 1979 (See CLIC, No. 12.3, February 25, 1980).

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and G. Tisshaw **Case heard:** Toronto, October 28, 1980 **Judgment pronounced:** October 28, 1980 **Reasons by:** D. Davey (in English; 5pp.), concurred in by E. Teitelbaum and G. Tisshaw **Docket no.:** 80-9027  
**Counsel:** G. Lalonde, Esq., for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

**25.6** Kathleen Elfreda Graham v. Minister of Employment and Immigration

**SPONSORSHIP - ADMISSION OF SPONSOREES WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - MEDICAL CERTIFICATE COMPLIED WITH IMMIGRATION REGULATIONS, PART I (revoked) - REFUSAL BASED ON REQUIREMENTS OF IMMIGRATION ACT, 1976 - WHETHER REFUSAL VALID - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79 - IMMIGRATION REGULATIONS, PART I (revoked)**

The appellant sponsored an application for permanent residence made by her parents. It was refused on the basis that their admission would cause excessive demands on health services. The legality of the refusal letter was contested in that it stated the sponsor's parents had been certified by the immigration medical services pursuant to section 19(1)(a)(ii) of the Immigration Act, 1976, which requires the opinion of a medical officer to be concurred in by at least one other medical officer, yet the refusal was based on a medical certificate which had been signed by one medical officer only, in accordance with the Immigration Regulations, Part I, then in force but revoked prior to the date of the refusal letter.

**Held:** Appeal allowed on legal and equitable grounds. The refusal letter referred to section 19(1)(a)(ii) of the Immigration Act, 1976, which requires the opinion of a medical officer to be concurred in by at least one other medical officer. It is clear from the evidence that the opinion of the medical officer was not concurred in by at least one other medical officer and therefore the refusal letter is defective.

Moreover, the Board took into consideration the fact that the appellant's mother is seventy-six years of age, her father is seventy-four, and their closest relative in Jamaica is a cousin who resides thirty-two miles away. They also appear to have the financial support of not only the sponsor and her husband but of all their other children residing in the United States. By residing in Canada, they will be able to see their children and grandchildren more often.

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, November 17, 1980 **Judgment pronounced:** November 17, 1980 **Reasons by:** U. Benedetti (in English; 5 pp.), concurred in by D. Davey and G. Tisshaw **Docket no.:** 79-9403  
**Counsel:** R. Whitemoor, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

**25.7** Charanjit Deol v. Minister of Employment and Immigration

**SPONSORSHIP - REFUSAL OF SPONSORED APPLICATION FOR LANDING - REFUSAL LETTER SENT TO PERSON SPONSORED BUT NOT TO SPONSOR - WHETHER VALID REFUSAL - TRANSITIONAL - REASONS FOR REFUSAL BASED ON IMMIGRATION ACT, 1952 (repealed) - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), S. 5(t) - IMMIGRATION REGULATIONS, PART I (revoked), S. 36 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(1) - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 17**

The appellant, a Canadian citizen, sponsored an application for landing made by his parents and brothers pursuant to the Immigration Act, 1952 (repealed). There was no evidence in the record of a letter of refusal having been sent to the sponsor but the sponsor's father was sent a letter refusing his application on the basis that he had not submitted satisfactory evidence to establish that he had reached the age of sixty, as required by the Immigration Act, 1952. This refusal was dated after the coming into force of the Immigration Act, 1976.

**Held:** Appeal allowed. The appellant testified that he was informed of the refusal in a letter from his father. There is no requirement in the Immigration Act, 1976 as to how the sponsor shall be informed. Therefore, the requirements of section 79 of the Act and Rule 17 of the Immigration Appeal Board Rules, 1978 have been met. However, a refusal made subsequent to the proclamation of the Immigration Act, 1976 but based on the provisions of the Immigration Act, 1952 is a nullity.

Mangat, Rajdevinder Singh v. M.E.I. (I.A.B. 78-6163), Scott, Campbell, Glogowski, May 30, 1979 (See CLIC, No. 9.2, November 26, 1979); Chaukla, Ajai Sheel v. M.E.I. (I.A.B. 79-6008), Campbell, Glogowski, Loiselle, September 21, 1979; Sidhu, Mohinder Kaur v. M.E.I. (I.A.B. 78-6146), Campbell, Glogowski, Tremblay, July 17, 1979 (See CLIC, No. 9.6, November 26, 1979).

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, December 1, 1980 **Judgment pronounced:** December 1, 1980 **Reasons by:** D. Davey (in English; 3 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 79-9429  
**Counsel:** R.N. Sharma, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

25.8 Denise Darlene Khan v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE OUTSIDE CANADA - ARRANGED MARRIAGE PERFORMED OUTSIDE CANADA - MARRIAGE TO SPONSOR NOT BONA FIDE - WHETHER VALID GROUND OF REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(4), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant sponsored an application for permanent residence of her husband, which was refused on the basis that he had failed to establish that his marriage to the appellant was bona fide.

**Held:** Appeal allowed. Nowhere in the Immigration Act, 1976 or the Immigration Regulations, 1978 is the fact that a person has failed to establish that his marriage is bona fide a prohibition for entry to Canada.

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and U. Benedetti **Case heard:** Toronto, December 10, 1980 **Judgment pronounced:** December 10, 1980 **Reasons by:** A.B. Weselak (in English; 2 pp.), concurred in by D. Davey and U. Benedetti **Docket no.:** 79-9357 **Counsel:** R. Sharma, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

25.9 Omar Khan (aka Pirthipal Singh)

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE AND POLITICAL AFFAIRS - DIFFICULTIES RESULTED FROM OBLIGATIONS DUE TO POLITICAL PATRONAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant is a citizen of Guyana, of East Indian ancestry. He was active in the People's Progressive Party, to which most people of East Indian background belonged but he later joined the People's National Congress Party, to which the Negro population belonged, for the express purpose of making himself available for government contract work. He was then approached by the National Congress Party chairman to make a contribution to the Party which he was willing but unable to make. He was beaten up by a group of blacks which included the Party chairman apparently because of his failure to make the requested contribution. His passport was in the name of Pirthipal Singh as he was fearful a passport would have been denied him had he applied under his legal name. He claimed to be a refugee on the basis of his race and his political affairs.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant has established in his evidence that East Indians in Guyana who function within the economy of their own group have no difficulty and indeed for a time he was able to do so. He joined the People's National Congress Party for the sole purpose of gaining economic advantage. As a direct result of this decision he has had difficulties. The difficulties flow from his failure to meet his obligations in a vicious system of political patronage into which he entered freely, willingly and selfishly.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and D. Davey  
Vancouver, July 24, 1980  
**Judgment pronounced:** July 24, 1980  
**Case heard:**  
**Reasons by:**  
**Docket**  
C.M. Campbell (in English; 3 pp.), concurred in by U. Benedetti and D. Davey  
**no.:** 80-6223.

---

25.10

Milton Ricardo Galleguillos (Mardones)

REFUGEE - REDETERMINATION - APPLICATION DID NOT INCLUDE TRANSCRIPT OF EXAMINATION UNDER OATH - AFFIDAVIT BY COUNSEL FOR APPLICANT THAT TRANSCRIPT HAD BEEN DULY SERVED - WHETHER TO ALLOW LATE FILING OF TRANSCRIPT

JURISDICTION OF BOARD - REFUGEE - REDETERMINATION - APPLICATION DID NOT INCLUDE TRANSCRIPT OF EXAMINATION UNDER OATH - WHETHER TO ALLOW LATE FILING OF TRANSCRIPT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(5), 70(1), (2)

The applicant, a citizen of Chile, claimed to be a Convention refugee. When his application was received by the Board, it did not include a transcript of the examination under oath as prescribed by section 70(2) of the Immigration Act, 1976. Counsel for the applicant stated in a letter supported by affidavit that the application which he had served on an immigration officer was accompanied by all the required documents including a copy of the examination under oath. In a statutory declaration, the immigration officer admitted having been served with certain documents by applicant's counsel but did not describe the documents in detail. A preliminary issue arose as to whether the Board could accept the late filing of the examination under oath.

**Held:** As the immigration officer did not state categorically that he was not served with the examination under oath and as, according to the affidavit of counsel for the applicant, a copy of the examination under oath had been served on the immigration officer, the Board decided to accept the late filing of a copy of the examination under oath to enable the applicant to perfect his application.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and B.M. Suppa  
Toronto, November 19, 1980  
**Judgment pronounced:** November 19, 1980  
**Case heard:**  
**Reasons by:**  
**Docket**  
U. Benedetti (in English; 7 pp.), concurred in by C.M. Campbell and B.M. Suppa  
**no.:** 80-9363.

---

25.11

Yosra Khalil Harb v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF CRIMINAL OFFENCE IN ENGLAND - OFFENCE OF IMPORTATION OF A CONTROLLED DRUG - WHETHER EQUIVALENT OFFENCE UNDER ACT OF PARLIAMENT OF CANADA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 27(1)(a), 72(1) - CUSTOMS AND EXCISE ACT, 1952 (U.K.), S. 304, AS AMENDED BY MISUSE OF DRUGS ACT, 1971 (U.K.), S. 26 - NARCOTIC CONTROL ACT, R.S.C. 1970, C. N-1, S. 5

The appellant, a permanent resident of Canada, was ordered deported following her conviction, while travelling abroad, pursuant to section 304 of the Customs and Excise Act, 1952 (U.K.), as amended by section 26 of the Misuse of Drugs Act, 1971 (U.K.). The adjudicator found that the conviction under that section constituted an offence equivalent to that set out in section 5 of the Narcotic Control Act.

**Held:** Appeal dismissed. Although the relevant law of the U.K. was never strictly proved, it is sufficiently paraphrased in the charge on indictment of which the appellant was convicted. The appellant was convicted of "fraudulent evasion of the prohibition on the importation of a controlled drug" - namely cannabis resin. This is clearly equivalent to importing a "narcotic" - a substance included in the schedule to the Narcotic Control Act, where cannabis resin is found in section 3. The deportation order is therefore in accordance with the law.

Brannson, Shane Gregory v. M.E.I. (F.C.A., no. A-213-80), Ryan, Urie, Kelly, June 5, 1980 (not yet reported).

**Coram:** J.V. Scott (Chairman), U. Benedetti and E. Teitelbaum **Case heard:** Halifax, September 23, 1980 **Judgment pronounced:** September 24, 1980 **Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 80-3020 **Counsel:** E. Chambers and W. Powroz, Barristers and Solicitors, for the appellant; W. Bernhardt, Esq., for the respondent.

---

25.12 Grace Euphrosyne D'Souza v. Minister of Employment and Immigration  
Mohan Eugene D'Souza v. Minister of Employment and Immigration

DEPORTATION ORDERS - PERMANENT RESIDENTS - GRANTED LANDING BY REASON OF MISREPRESENTATION OF A MATERIAL FACT - MISREPRESENTATION MADE BY ONE APPELLANT ONLY - WHETHER FACT MATERIAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72 - IMMIGRATION REGULATIONS, 1978, S. 2(1)

The female appellant was granted landing on the same day as her son (the male appellant), who was admitted to Canada as the accompanying dependant of his mother. In her application for permanent residence, the female appellant had completed the section requiring a listing of children under eighteen years of age with the initials "N/A". Four months after her arrival in Canada, she took steps to sponsor a younger son's admission to Canada. At this time, she advised the immigration authorities that she had four children under eighteen years of age who had not been listed on her application. Both she and her son were ordered deported on the ground that they had been granted landing by reason of misrepresentation of a material fact. Her son had filed his own application for permanent residence in which there was no misrepresentation. The appellants' contest to the legality of the deportation orders was based on the interpretation of "material fact", the materiality of the non-disclosure of the four children.

**Held:** Appeals dismissed. Both deportation orders are valid. In previous decisions of The Board, non-disclosure of children has been held to be material. The male appellant came to Canada as an accompanying dependant. Being over eighteen years of age at the time of his mother's application for permanent residence in Canada, he was not included in her application and filed his own application as required. He was landed as accompanying his mother, who failed to disclose the existence of four other children under eighteen years of age, a material fact. He was therefore granted landing by reason of misrepresentation of a material fact exercised by another person.

With respect to their appeal on equitable grounds, counsel for the appellants attempted to show there was no element of purposeful deception. I am not entirely convinced. The Board cannot find such considerations as would warrant the granting of special relief.

M.M.I. v. Brooks [1974] S.C.R. 850; Headlam v. M.M.I. 11 I.A.C. 141/149; Anderson, Lola Loretta v. M.M.I. (I.A.B. 77-9137), Petrie, Benedetti, Tisshaw, August 3, 1977; Reid, Elrode Alfanzo v. M.E.I. (I.A.B. 78-9170), Weselak, Benedetti, Davey, February 15, 1979 (See CLIC, No. 6.20, August 24, 1979); Ebanks, Barbara Elinora v. M.M.I. (F.C.A., no. A-559-76), Jackett, Urie, MacKay, January 11, 1977 (not yet reported); Tzemanakis v. M.M.I. 8 I.A.C. 156/165.

**Coram:** D. Davey (Vice-Chairman), B.M. Suppa and G. Tisshaw  
September 30, 1980 **Judgment pronounced:** September 30, 1980  
(in English; 7 pp.), concurred in by G. Tisshaw and B.M. Suppa  
79-9461 **Counsel:** M. Dyach, Barrister and Solicitor, for the appellants;  
W.A. MacIntyre, Esq., for the respondent. **Case heard:** Toronto,  
**Reasons by:** D. Davey  
**Docket no.:** 79-9471, for the appellants;

---

**25.13** Wayne Hoyt Virgo v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - APPELLANT GRANTED LANDING AT AGE TEN -  
SUBSEQUENT DEPARTURE WITH PARENTS - WHETHER ABANDONED PERMANENT RESIDENCE - INTENTION -  
IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 20(1), 24, 27(2)(e), 72

The appellant, a citizen of Jamaica, first entered Canada at the age of ten as a non-immigrant, joining his parents in Canada and he was thereafter landed. Three years later he returned to Jamaica with his family. He remained there for seven and one half years then returned to Canada and was admitted as a visitor. He was then ordered deported for having remained in Canada after ceasing to be a visitor. The appellant alleged that he had not ceased to be a permanent resident as he did not leave Canada with the intention of abandoning Canada as his place of permanent residence.

**Held:** Appeal dismissed. The appellant was taken back to Jamaica by his parents before reaching the age of fourteen. He did not voluntarily abandon Canada as his place of permanent residence; being a minor he was not capable in law of making a decision to leave Canada voluntarily. It is not necessary to examine the intent of the appellant's parents at the time of their return to Jamaica. We have only to look at the intent of the appellant when he became of sufficient age to form an intent. The appellant claimed that it was always his intention to come back to Canada but his actions do not confirm his claimed intention. About five months before returning to Canada he applied for admission to a two year course to qualify him to be a certified teacher in Jamaica but he was not accepted. This action is not consistent with a desire to return to live permanently in Canada. The appellant's visitor's record was signed by him admitting him as a visitor. He did not form an intent to establish residence in Canada on reaching the age of fourteen and exercise that intent at the first opportunity. Not being a permanent resident, he has no appeal pursuant to section 72 of the Act.

D'Souza, Troy Anthony v. M.E.I. (I.A.B. 79-9012), Davey, Teitelbaum, Tisshaw, October 8, 1980; Fryer v. M.M.I. 5 I.A.C. 159/166; Wittkamper v. M.M.I. 6 I.A.C. 369/373; Vincenti v. M.M.I. [1978] 1 F.C. 45; Wynia, John v. M.M.I. (I.A.B. 69-1001), Weselak, Glogowski, Byrne, August 11, 1970.

**Coram:** D. Davey (Vice-Chairman), G. Tisshaw and B.M. Suppa  
September 30, 1980 **Judgment pronounced:** September 30, 1980  
(in English; 10 pp.), concurred in by G. Tisshaw and B.M. Suppa  
**Counsel:** R. Bailey, Esq., for the appellant; J.D. Taylor, Esq., for the respondent. **Case heard:** Toronto,  
**Reasons by:** D. Davey  
**Docket no.:** 80-9132

---

**25.14** Iqbal Akhtar Chaudhry v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - GRANTED LANDING BY REASON OF FRAUDULENT OR  
IMPROPER MEANS OR MISREPRESENTATION OF A MATERIAL FACT - NON-COMPLIANCE WITH REGULATIONS  
BY ADJUDICATOR AT INQUIRY - WHETHER ADJUDICATOR THEREBY LOST JURISDICTION - IMMIGRATION  
ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 72 - IMMIGRATION REGULATIONS, 1978, SS.  
27(2)(b), 29(1)(a), 29(2)

The appellant, a permanent resident, was ordered deported on the basis that he had been granted landing by reason of fraudulent and improper means and misrepresentation of a material fact. At the hearing of the appeal, counsel for the appellant contended that the adjudicator had lost jurisdiction at the inquiry because he had not complied with certain provisions of the Immigration Regulations, 1978. At the outset of the inquiry a report dated August 23, 1979 was filed together with the direction for inquiry. The inquiry was adjourned and then resumed at which time a further report dated May 23, 1979 was filed.

**Held:** Appeal allowed. The direction for inquiry was signed as a result of the report dated May 23, 1979. The report which was made available to the subject of the inquiry was the report dated August 23, 1979 which was not the report upon which the officer signing the direction had acted. Therefore, there was non-compliance with section 27(2)(b) of the Regulations. Section 29(1)(a) of the Regulations requires that the copy of the direction and a copy of the report on the basis of which the direction was made be filed at the inquiry. The report of August 23rd was filed, which was not the report upon which the direction was based. Therefore, there was non-compliance with this regulation as well. Furthermore, an examination of the minutes of the inquiry reveals that the subject of the inquiry was never expressly informed of the allegations made against him, contrary to the requirements of section 29(2) of the Regulations.

The foregoing regulations are mandatory and must be complied with in order to vest jurisdiction in the adjudicator to conduct the inquiry. The filing of the report dated May 23, 1979 after the inquiry had proceeded on adjournment does not cure this default. The adjudicator had proceeded with the inquiry without acquiring jurisdiction.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and B.M. Suppa  
**Judgment pronounced:** November 28, 1980  
**Case heard:** Toronto, November 18, 1980  
**Reasons by:** A.B. Weselak (in English; 7 pp.), concurred in by E. Teitelbaum and B.M. Suppa  
**Docket no.:** 80-9035  
**Counsel:** P. Copeland, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

25.15 Manuel Custodio Medeiros v. Minister of Employment and Immigration

REMOVAL ORDER - EXCLUSION ORDER - NOT IN POSSESSION OF A VISA AT PORT OF ENTRY - WHETHER RETURNING RESIDENT - INTENTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 19(2)(d), 24, 32(5)(b), 72

The appellant, a citizen of Portugal, returning to Canada after a seven-month absence in Portugal, was ordered excluded on the basis that he was not in possession of a visa when he presented himself at a port of entry in Canada. He alleged that he was a returning resident and therefore did not require a visa upon returning to Canada. He first came to Canada in 1957 as a landed immigrant. On numerous occasions he returned for protracted periods to Portugal where his daughters and his wife have always lived. When he first came to Canada his intention was to make enough money to return to Portugal and buy a house where he and his family would live permanently. After ten years in Canada, he decided he preferred to live here and he persuaded his wife to come to Canada. However, she soon left to go home to Portugal. Despite assertions that his wife and younger daughter are prepared to make their home in Canada, they made no enquiries about applying for permanent residence.

**Held:** Appeal dismissed. The appellant has been in Canada on and off for twenty-three years and did not make a single gesture to indicate his interest in making Canada his permanent home. With his Canadian earnings he bought property in Portugal. He did not settle in any one spot in Canada during his working life in the Northwest Territories. His actions were clearly those of a person with no intention of making his life in Canada permanent.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and G. Tisshaw  
**Judgment pronounced:** November 25, 1980  
**Case heard:** Toronto, November 24, 1980  
**Reasons by:** E. Teitelbaum (in English; 4 pp.), concurred in by D. Davey and G. Tisshaw  
**Docket no.:** 80-9218  
**Counsel:** R. Bombier, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

CAI

M181

- 152

Government  
Publication

# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 26

Date May 22, 1981

## Notes of Recent Decisions

### rendered by the Immigration Appeal Board

by Philippa Wall

JUN 3 1981

Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

26.1	78-1099	Singh, Ajit v. Minister of Employment and Immigration
26.2	80-3006	Ahuja, Birinder Singh v. Minister of Employment and Immigration
26.3	79-6199	Santos, Rosa Pita Carinha v. Minister of Employment and Immigration
26.4	79-6219	Kundan, Harjinder Singh v. Minister of Employment and Immigration
26.5	80-9031	Walker, Leonora v. Minister of Employment and Immigration
26.6	80-9067	Gouveia, Beatriz v. Minister of Employment and Immigration
26.7	79-9177	Foster, Johanna v. Minister of Employment and Immigration
26.8	80-9077	Bernard, Avis May v. Minister of Employment and Immigration

#### REFUGEES

26.9	80-9204	Miranda-Cuellar, Jesus Antonio v. Minister of Employment and Immigration
	80-9211	De Miranda, Sonia Marina v. Minister of Employment and Immigration
26.10	80-1116	Barros-Marsh, Maryan v. Minister of Employment and Immigration
26.11	80-6410	Jankowski, Lech

#### DEPORTATION ORDERS

26.12	76-6107	Issighos, Konstantinos v. Minister of Employment and Immigration
26.13	80-9251	Daniels, William v. Minister of Employment and Immigration
26.14	80-9320	Tari, Raffaele v. Minister of Employment and Immigration

#### REMOVAL ORDER

26.15	80-6136	Alsadi, Mohamad Naser v. Minister of Employment and Immigration
-------	---------	---

#### EVIDENCE

26.1	78-1099	Singh, Ajit v. Minister of Employment and Immigration
------	---------	---

#### JURISDICTION OF BOARD

26.4	79-6219	Kundan, Harjinder Singh v. Minister of Employment and Immigration
26.7	79-9177	Foster, Johanna v. Minister of Employment and Immigration
26.10	80-1116	Barros-Marsh, Maryan v. Minister of Employment and Immigration
26.15	80-6136	Alsadi, Mohamad Naser v. Minister of Employment and Immigration

#### PROCEDURE

26.5	80-9031	Walker, Leonora v. Minister of Employment and Immigration
26.6	80-9067	Gouveia, Beatriz v. Minister of Employment and Immigration

#### MOTIONS

26.7	79-9177	Foster, Johanna v. Minister of Employment and Immigration
26.10	80-1116	Barros-Marsh, Maryan v. Minister of Employment and Immigration

26.1

Ajit Singh v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE REFUSED ON MEDICAL GROUNDS - TRANSITIONAL - REFUSAL BASED ON IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed) - WHETHER VALID REFUSAL - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

EVIDENCE - SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - PRODUCTION OF MEDICAL REPORT AT HEARING - WHETHER MEDICAL REPORT ADMISSIBLE - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), S. 5(c) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 19(1)(a)(i), (ii), 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 31(2)(a)

The appellant sponsored the applications for landing made by his father, mother and brother. The father was refused and by letter dated April 13, 1978 (three days following the proclamation of the Immigration Act, 1976) the sponsor was informed of the grounds for refusal, namely, that his father was a member of the prohibited class described in section 5(c) of the Immigration Act, R.S.C. 1970, c. I-2 (repealed), in that he was physically defective and had no means of support to prevent his becoming a public charge.

**Held:** Appeal allowed in equity. The refusal was based on medical grounds, that the appellant's father is suffering from chronic bronchitis and cataracts. The Board has held that one must apply a regulation in force at the date a sponsored application is made rather than an amendment in effect after the application is made but before it is finally dealt with. The refusal is valid in law. The appellant produced a medical report at the hearing in an attempt to prove that his father's condition had improved. This document was not admissible as it was not supported by affidavit or statutory declaration as required by Rule 31(2)(a) of the Immigration Appeal Board Rules, 1978.

However, with respect to equitable considerations, the appellant is gainfully employed and has a home where he intends to look after his parents. His intentions are in accordance with one of the objectives of the Immigration Act, 1976, to facilitate the reunion in Canada of Canadian citizens with their close relatives from abroad.

R. Tremblay (dissenting)

The refusal letter should have been made under section 19(1)(a)(i) or (ii) of the Immigration Act, 1976 which came into force on April 10, 1978. Furthermore, the medical report is not concurred in by any other medical officer. I would allow the appeal in law. As far as equity is concerned, I cannot find humanitarian reasons to allow the appeal. If the father's health has not improved, it is certainly not the purpose of the law to impose a burden on Canadian society. The welfare of Canadians should prevail over the admission of sick relatives who may require extensive medical care and may endanger the health of Canadian citizens. This is in keeping with the words "... to promote the ... interests of Canada..." in section 3 of the Act.

Monton, Cesario E. v. M.E.I. (I.A.B. 78-6133), Scott, Campbell, Teitelbaum, October 25, 1978 (See CLIC, No. 3.16, May 28, 1979).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay (dissenting) and G. Loiselle  
**heard:** Montreal, September 4, 1980  
**Judgment pronounced:** September 4, 1980  
**Reasons by:** J.-P. Houle (in French; 5 pp.), concurred in by G. Loiselle  
**reasons by:** R. Tremblay (in English; 2 pp.)  
**Docket no.:** 78-1099  
**Counsel:** H. Frumkin, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

26.2

Birinder Singh Ahuja v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - WHETHER STEPMOTHER WITHIN FAMILY CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4, 5(1)

The appellant sponsored the applications for landing made by his stepmother and her dependant, an adopted son, the appellant's stepbrother. The Immigration officials accepted the claimed relationship between the appellant and his stepmother and were prepared to recommend her admission to Canada by order in council. They were not prepared, however, to recognize the legality of the adoption of the appellant's stepbrother, and they refused him on the basis that there was no satisfactory evidence to prove he was a legally adopted son. The sponsor appealed the refusal.

**Held:** Appeal dismissed. The stepbrother of the appellant, if legally adopted, is a "dependant" within the meaning of the definition in section 2(1) of the Regulations. However, the initial problem is whether the appellant's stepmother is a "member of the family class" as defined in section 4 of the Regulations. Although, in Re Gill and M.E.I., the word "father" was held to include both a natural and legitimate father, there is a blood relationship between a natural father and illegitimate child but there is no blood relationship between a stepmother and stepchild. "Mother" is not defined in the Regulations, nor is there any indication that stepmother is to be included - quite the contrary, since "son" is defined as "the issue of a marriage ...", "the issue of a woman ..." or "adopted before the age of thirteen". The stepmother is therefore not a member of the family class. The appellant's stepbrother can only be admitted if he is the dependant of a member of the family class and, even assuming the legality of the adoption, his adoptive mother is not a member of the family class.

Re Gill and M.E.I. (1979) 102 D.L.R. (3d) 341 (F.C.A.); Re Rutherford (1917) 40 O.L.R. 266 (S.C.).

<b>Coram:</b> J.V. Scott (Chairman), W. Hlady and B. Howard November 3, 1980	<b>Judgment pronounced:</b> November 6, 1980 (in English; 3 pp.), concurred in by W. Hlady and B. Howard	<b>Case heard:</b> Ottawa, <b>Reasons by:</b> J.V. Scott <b>Docket no.:</b> 80-3006
<b>Counsel:</b> S. Leikin, Barrister and Solicitor, for the appellant; W. Bernhardt, Esq., for the respondent.		

---

26.3      Rosa Pita Carinha Santos v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF PERSON SPONSORED WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - MEDICAL REPORTS BASED ON IMMIGRATION ACT, R.S.C. 1970 (repealed) - REFUSAL MADE PURSUANT TO IMMIGRATION ACT, 1976 - SUBSEQUENT MEDICAL REPORTS PREPARED FOLLOWING REFUSAL - WHETHER REFUSAL VALID - IMMIGRATION ACT, R.S.C. 1970, C. 1-2, S. 5 (repealed) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79

The appellant sponsored the application for admission to Canada as permanent residents of her mother and brother. The brother was refused, pursuant to the Immigration Act, 1976, on the ground that his admission would cause excessive demands on health services. The appellant alleged the refusal was not valid in law in that it was based upon medical reports dated after the proclamation of the Immigration Act, 1976 yet made pursuant to section 5 of the Immigration Act, R.S.C. 1970 (repealed). At the hearing of the appeal, counsel for the appellant moved that these medical reports, filed as exhibits, be struck from the record. Not included in the record but filed with the Board prior to the hearing was a letter from the Immigration Appeals Office dated subsequent to the refusal letter which included new medical reports prepared in accordance with the Immigration Act, 1976.

**Held:** Appeal allowed on equitable grounds. The appellant's motion is denied. While there is nothing in the transitional section of the Immigration Act, 1976 that specifically refers to a situation similar to the one in this case, the whole thrust of the section emphasizes continuity. The reports were prepared following the process of the application under the old Act and they were in the language of the old Act but the facts as set out in those reports are not in question or they don't appear to be. The refusal letter of August 20, 1979 based on the new legislation is in the language of the new legislation. The letter from the Appeals Office includes new medical reports prepared in terms of the legislation proclaimed on April 10, 1978. The most important element is that the appellant comes before us in full knowledge of the case to be met and from the comments made by both counsel, I believe it its common ground that she comes before us without prejudice as a result of these documents. The refusal letter is valid in law.

Coram: C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard      Case heard:  
Vancouver, November 19, 1980      Judgment pronounced: November 19, 1980      Reasons by:  
W.M. Hlady (in English; 4 pp.), concurred in by C.M. Campbell and B. Howard      Docket  
no.: 79-6199      Counsel: D. Quinlan, Barrister and Solicitor, for the appellant;  
C.J. Dickey, Esq., for the respondent.

---

26.4      Harjinder Singh Kundan v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR APPEALING CANCELLATION OF APPLICATION FOR LANDING - PROPER DOCUMENTATION NOT SUPPLIED BY APPLICANT FOR LANDING - WHETHER BOARD HAS JURISDICTION TO HEAR APPEAL

JURISDICTION OF BOARD - SPONSORSHIP - SPONSOR APPEALING CANCELLATION OF APPLICATION FOR LANDING - PROPER DOCUMENTATION NOT SUPPLIED BY APPLICANT FOR LANDING - WHETHER BOARD HAS JURISDICTION TO HEAR APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 3

The sponsor appealed the cancellation of an application for landing made by his father, mother and their dependants. The appellant's father was sent a letter from the Immigration Counsellor, Canadian High Commission, New Delhi, which stated that his failure to respond to their instructions within a reasonable period of time resulted in their being unable to deal with his application and therefore they had no alternative but to cancel the application. This appeal is not an appeal against a refusal as is the usual situation but an appeal against the cancellation of an application on the grounds that proper documentation was not supplied by the applicant.

Held: Appeal dismissed. The Board assumes jurisdiction on the grounds that not to do so would give officials the power to deny an appeal merely by failing to complete an application and takes as its authority Rule 3 of the Immigration Appeal Board Rules, 1978. Counsel for the appellant contended that the proper procedure would be to complete the application and refuse it and thus allow the right of appeal by the sponsor but the Board recognizes the right of the visa officer to act as he/she did. The visa officer has a right to expect reasonable documentation to fulfil the requirements of section 9(3) of the Act so long as that requirement is not used arbitrarily. It is evident that the visa officer made a serious attempt over a period of approximately eleven months to obtain the required documentation. It is always open to the applicant to re-apply when adequate documents can be obtained.

Coram: C.M. Campbell (Vice-Chairman), B. Howard and W.M. Hlady      Case heard: Calgary, December 8, 1980      Judgment pronounced: December 9, 1980      Reasons by: B. Howard (in English; 3 pp.), concurred in by C.M. Campbell and W.M. Hlady      Docket no.: 79-6219  
Counsel: D.P. Pandia, Esq., for the appellant; I.D. Munn, Esq., for the respondent.

---

26.5      Leonora Walker v. Minister of Employment and Immigration

SPONSORSHIP - NO APPEARANCE BY APPELLANT (SPONSOR) AT HEARING OF APPEAL - WHETHER APPEAL DEEMED ABANDONED - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS -

PROCEDURE - SPONSORSHIP - NO APPEARANCE BY APPELLANT (SPONSOR) AT HEARING OF APPEAL - WHETHER APPEAL DEEMED ABANDONED - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 9(3), 19(2)(d), 79

The appellant sponsored the application for permanent residence of her fiancé, which was refused on the grounds that he had not proven his admission would not be contrary to the Act and he had not answered truthfully questions put to him by a visa officer. The appellant failed to appear before the Board at the hearing of her appeal.

**Held:** Appeal dismissed. As the appellant failed to appear before the Board to pursue her appeal, the Board is of the opinion that the appellant has abandoned her appeal. Moreover, as she failed to appear before the Board to give any evidence, the Board was unable to consider whether there were humanitarian or compassionate considerations as should warrant the granting of special relief.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw  
Toronto, December 9, 1980  
**Judgment pronounced:** December 9, 1980  
A.B. Weselak (in English; 1 p.), concurred in by U. Benedetti and G. Tisshaw  
**no.:** 80-9031 **Counsel:** L. Williams, Esq., for the respondent.

**Case heard:**  
**Reasons by:**  
**Docket**

---

26.6 Beatriz Gouveia v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF PERSON SPONSORED WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH OR SOCIAL SERVICES - NO APPEARANCE BY APPELLANT (SPONSOR) AT HEARING OF APPEAL - WHETHER REFUSAL VALID - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

PROCEDURE - SPONSORSHIP - NO APPEARANCE BY APPELLANT (SPONSOR) AT HEARING OF APPEAL - WHETHER REFUSAL VALID - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79

The appellant sponsored the applications for permanent residence made by her parents and her siblings. The applications were refused because the father was inadmissible in that his condition was likely to cause demands on health or social services. The appellant was not present at the hearing of her appeal nor was she represented by counsel.

**Held:** Appeal dismissed. In the record there appears a medical certificate signed by one medical officer and concurred in by one other medical officer. The Board finds that the father of the sponsor is indeed inadmissible as he falls within the class of persons described in section 19(1)(a)(ii) of the Act and for this reason his dependants are also inadmissible. The refusal letter is a valid refusal letter. Furthermore, the Board cannot consider its discretionary powers under paragraph 79(2)(b) of the Act as the appellant did not appear before the Board, and therefore it takes no action in this regard.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw  
Toronto, December 11, 1980  
**Judgment pronounced:** December 11, 1980  
A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and G. Tisshaw  
**no.:** 80-9067 **Counsel:** W.A. MacIntyre, Esq., for the respondent.

**Case heard:**  
**Reasons by:**  
**Docket**

---

26.7 Johanna Foster v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION OF BOARD - MOTION BY COUNSEL FOR APPELLANT TO ADD GROUNDS OF REFUSAL OF APPLICATION FOR PERMANENT RESIDENCE - WHETHER BOARD HAS JURISDICTION TO MAKE ORDER REQUESTED

JURISDICTION OF BOARD - SPONSORSHIP - MOTION BY COUNSEL FOR APPELLANT TO ADD GROUNDS OF REFUSAL OF APPLICATION FOR PERMANENT RESIDENCE - WHETHER BOARD HAS JURISDICTION TO MAKE ORDER REQUESTED

MOTION - SPONSORSHIP - COUNSEL FOR APPELLANT SEEKING TO ADD GROUNDS OF REFUSAL OF APPLICATION FOR PERMANENT RESIDENCE - WHETHER BOARD HAS JURISDICTION TO MAKE ORDER REQUESTED - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(c), 19(1)(d), 79 - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 36

The sponsor appealed a refusal of the application for permanent residence of her three sons. Before the date set for the hearing of the appeal counsel for the appellant filed a notice of motion with the Board for an order adding two additional grounds of refusal of the application for landing. By so doing, counsel was attempting to avoid a duplication of procedures on the grounds of natural justice.

**Held:** Motion dismissed. It is the function of the immigration officer or visa officer to refuse or approve the application for landing and advise the sponsor of the grounds for refusal. The Board's jurisdiction is limited to hearing appeals from the grounds set out in that refusal. Once the Board has allowed an appeal on the grounds set out in the refusal, the review of the application is resumed by the immigration officer. The Immigration Act, 1976 provides that if additional grounds of refusal are determined, the application can again be refused, necessitating a further appeal. Rule 36 of the Immigration Appeal Board Rules, 1978 allows the Minister to add additional grounds when proper notice is given to the appellant and the Board.

Hansen-Apesteguy, Camille Francine v. M.E.I. (I.A.B. 79-3017), Glogowski, Loisselle, Davey, October 23, 1979.

**Coram:** D. Davey (Vice-Chairman), B.M. Suppa and G. Tisshaw  
**Judgment pronounced:** December 18, 1980  
**Case heard:** Toronto, December 17, 1980  
**Reasons by:** D. Davey  
(in English; 5 pp.), concurred in by B.M. Suppa and G. Tisshaw  
**Docket no.:** 79-9177  
**Counsel:** J. Wahl, Barrister and Solicitor, for the appellant; W. MacIntyre, Esq., for the respondent.

---

26.8 Avis May Bernard v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - AGE OF SPONSOREE - SPONSORED SON UNDER TWENTY-ONE AT TIME OF COMPLETING APPLICATION FOR PERMANENT RESIDENCE BUT OVER TWENTY-ONE AT TIME OF SIGNING APPLICATION IN PRESENCE OF IMMIGRATION OFFICIAL - WHETHER WITHIN SPONSORABLE CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 4, 6(1)

The sponsor appealed the refusal of an application for landing made by her son. At issue on appeal was the age of the sponsored son. He was under twenty-one years of age when he completed his application for permanent residence and mailed it to the immigration authorities in Kingston, Jamaica. He was still under twenty-one when his application was received at the immigration offices. He was then interviewed, and at the interview he signed his application for permanent residence in the presence of an immigration official. At the time of signing the application, he had attained the age of twenty-one.

**Held:** Appeal allowed. The record clearly indicates that the sponsoree was under twenty-one years of age at the time he filed his application for permanent residence, that is, at the time the application was received at the immigration offices. He was therefore admissible as a member of the family class in accordance with the Immigration Regulations, 1978.

Mahedi, Zaitun Moez v. M.E.I. (I.A.B. 79-6160), Campbell, Glogowski, Benedetti, February 12, 1980 (See CLIC, No. 17.3, July 21, 1980).

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and G. Tisshaw  
**Judgment pronounced:** January 6, 1981  
**Case heard:** Toronto, January 6, 1981  
**Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by U. Benedetti and G. Tisshaw  
**Docket no.:** 80-9077  
**Counsel:** J.D. Taylor, Esq., for the respondent.

---

26.9 Jesus Antonio Miranda-Cuellar v. Minister of Employment and Immigration  
Sonia Marina De Miranda v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR PERSECUTION BECAUSE OF MEMBERSHIP IN A SOCIAL GROUP AND POLITICAL OPINIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 3(c), 70

The male applicant, a citizen of El Salvador, entered Canada as a visitor (student). While at university in El Salvador he was an active member of A.G.E.U.S., a university group that provided assistance to the poor and supported trade unions and political parties seeking reform in the country. In 1974, the male applicant became a member of the organizing committee of this group. He took part in all activities including acting as a marshal during demonstrations and speaking at rallies. While participating in these activities, he was arrested by the National Police and imprisoned for three days during which time he was threatened, interrogated and beaten. He was again arrested by the National Guard in 1976 while participating in a demonstration, was held prisoner for six days and beaten. Upon release from prison, he was hospitalized for two months and treated for extensive injuries. Every few weeks the Guards would come and search his house, keeping the family in a constant state of tension. The applicant obtained a student visa, having been advised it was the fastest and surest way to leave the country. When it expired, he made his claim to be a Convention refugee. He fears persecution because of his membership in a social group, the university group A.G.E.U.S.; his sympathy with the Christian Democratic Party; his criticism of the military junta led by General Romero; his political opinions in opposition to the military government of Romero; and the surveillance of his person and repeated searches of his home carried out by members of the National Guard. His fear of persecution is based on his experiences of arrest, imprisonment and torture by the National Police and National Guard in El Salvador.

**Held:** Applications having been allowed to proceed, applicants are determined to be Convention refugees. The government of General Romero was overthrown by a military coup in October, 1979. This government was noted for the repressive measures practised by its security forces. The question to be determined is whether this situation still exists in El Salvador. A witness who had visited El Salvador recently testified that the country was governed by a military junta which had little control over the security forces, that repression was still practised by the security forces and was in fact increasing in comparison to the repression practised by the government of General Romero. Numerous articles and newsletters were filed from which it was apparent that the situation had not improved in El Salvador. Having considered all the evidence as a whole, the Board is of the opinion that the male applicant has established a valid well-founded fear of persecution should he be returned to El Salvador.

The female applicant, the wife of the male applicant, claims to be a Convention refugee due to the fact that she is his wife. She claimed that when the police searched her home after the departure of her husband, they broke down the door and beat her. She fears that if she were returned to El Salvador she would receive further similar treatment. One of the objectives stated in the Immigration Act, 1976 is to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad. The Board is of the opinion that the female applicant also has a well-founded fear of persecution.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:**  
Toronto, November 19, 1980 **Judgment pronounced:** November 20, 1980 **Reasons by:**  
A.B. Weselak (in English; 6 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket**  
**no.:** 80-9204, 80-9211 **Counsel:** G. Sadoway, law student, for the applicants; J.D. Taylor, Esq., for the respondent.

---

26.10 Maryann Barros-Marsh v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - APPLICATION DISMISSED FOR WANT OF PERFECTION - DECLARATION UNDER OATH DID NOT ACCOMPANY APPLICATION - MOTION BY APPLICANT FOR ORDER ALLOWING INTRODUCTION OF GROUNDS IN SUPPORT OF APPLICATION - WHETHER BOARD HAS JURISDICTION TO GRANT ORDER

MOTION - REFUGEE - REDETERMINATION - DECLARATION UNDER OATH DID NOT ACCOMPANY APPLICATION - APPLICANT SEEKING ORDER ALLOWING INTRODUCTION OF GROUNDS IN SUPPORT OF APPLICATION - WHETHER BOARD HAS JURISDICTION TO GRANT ORDER

JURISDICTION OF BOARD - REFUGEE - REDETERMINATION - APPLICATION DISMISSED FOR WANT OF PERFECTION - DECLARATION UNDER OATH DID NOT ACCOMPANY APPLICATION - MOTION BY APPLICANT FOR ORDER ALLOWING INTRODUCTION OF GROUNDS IN SUPPORT OF APPLICATION - WHETHER BOARD HAS JURISDICTION TO GRANT ORDER - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 70(2), 71

The applicant filed an application for redetermination of claim to be a Convention refugee. The application was refused by the Board for want of perfection, in that it was not accompanied by a declaration under oath as required by section 70(2) of the Immigration Act, 1976. The applicant then moved for an order allowing her to introduce grounds in support of her application for redetermination in view of the missing declaration under oath.

**Held:** Motion dismissed. The expression "want of perfection" means that a condition precedent has not been satisfied and that the defect prevents the Board from exercising its jurisdiction. In refugee matters, the jurisdiction of the Board is clearly defined and circumscribed by section 71(1) of the Act, which determines the conditions required for exercising jurisdiction. A condition precedent to the exercise of jurisdiction is that a declaration under oath accompany the application for redetermination. This is clear from the terms of section 70(2) and section 71(1) of the Act.

Re Salvatierra and M.E.I. (1979) 99 D.L.R. (3d) 525 (F.C.A.); Wieckowska, Agnieszka v. M.E.I. (I.A.B. 78-1086), Scott, Houle, Tremblay, November 6, 1978 (See CLIC, No. 4.17, June 29, 1979).

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Montreal, November 14, 1980	<b>Judgment pronounced:</b> December 4, 1980	<b>Case heard:</b> <b>Reasons by:</b>
J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loiselle <b>no.:</b> 80-1116	<b>Counsel:</b> J. Mercier, Barrister and Solicitor, for the applicant; J.R. St-Louis, Esq., for the respondent.	<b>Docket</b>

---

26.11

Lech Jankowski

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF HAVING DESERTED HIS COUNTRY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a Polish seaman, claims to be a Convention refugee on several grounds, inter alia, that he fears harsh reprisals as a consequence of his having deserted his country.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. It is entirely likely that the applicant is telling the truth when he says that he faces the probability of a heavy jail sentence for jumping ship and thus deserting his country. Unfortunately, the definition "Convention refugee" contains no reference to fear of punishment for a crime against the ordinary laws of the applicant's country. Moreover, it is not reasonable that a person may place himself in jeopardy with the laws of his country by desertion and thereby claim special status if it is that act itself which creates the claim for refugee status.

Kamel, Victor Fathy (I.A.B. 79-1104), Scott, Tremblay, Loiselle, August 1, 1979 (See CLIC, No. 15.11, May 28, 1980).

<b>Coram:</b> C.M. Campbell (Vice-Chairman), B. Howard and E. Teitelbaum Vancouver, January 5, 1981	<b>Judgment pronounced:</b> January 5, 1981	<b>Case heard:</b> <b>Reasons by:</b> B.
Howard (in English; 5 pp.), concurred in by C.M. Campbell and E. Teitelbaum <b>no.:</b> 80-6410.		<b>Docket</b>

---

26.12

Konstantinos Issighos v. Minister of Employment and Immigration

DEPORTATION ORDER - PERSON DOMICILED IN CANADA - SUBSEQUENT RESIDENCE OUT OF CANADA - WHETHER ABANDONED CANADIAN DOMICILE - INTENTION - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), SS. 4(1), (3), 18(1)(e)(ii), (iii), (2) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3 (repealed), S. 11

The appellant, a citizen of Greece, was granted landing in Canada in 1967. Five years later, he was involved in an extortion scheme to raise money for a resistance movement in Greece, he was charged as a result and was released on bail. He skipped bail, travelled to Europe and continued working for the Greek resistance movement in Germany. While in Germany, he was sheltered by members of the resistance movement in their homes. There was no evidence that he had established an address or residence of his own or that he was productively employed at any time while in Germany. He returned to Canada, where he had left a wife and three children, after an absence of about eight months. He was sentenced for the extortion crime and a deportation order was made against him pursuant to the Immigration Act, R.S.C. 1970, c. I-2 (repealed), in that he was a person not having Canadian domicile who had been convicted of an offence under the Criminal Code. The appellant contended that he had not lost his Canadian domicile and was accordingly not subject to deportation.

**Held:** Appeal allowed. The appellant was landed in Canada in 1967 and left the country in 1973. He had acquired domicile in Canada, having had his place of domicile for at least five years in Canada after being landed. When the appellant left Canada for Europe in 1973, he did not consciously abandon his wife, his children, his home or his domicile but rather in a state of fear, even panic, he fled not from these relationships and associations but simply from the inevitable consequences of his crime. When he left Canada he was motivated only by fear and in that state was incapable of rationally formulating a plan for himself which would include establishing residence elsewhere. During his absence he set down no roots of any kind. There is no indication this was his intention or that he had any intention. He did not lose his domicile in Canada.

Wadsworth v. McCord (1886) 12 S.C.R. 466.

**Coram:** C.M. Campbell (Vice-Chairman), G. Loiselle and W.M. Hlady  
**Judgment pronounced:** September 19, 1980  
**by:** C.M. Campbell (in English; 7 pp.), concurred in by G. Loiselle and W.M. Hlady  
**Docket no.:** 76-6107  
**Counsel:** E. Arnold, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

26.13

William Daniels v. Minister of Employment and Immigration

DEPORTATION ORDER - PERSON REMAINING IN CANADA AFTER CEASING TO BE VISITOR - WHETHER RETURNING RESIDENT OF CANADA - ABANDONMENT OF PERMANENT RESIDENCE - LEAVING CANADA WITH INTENTION TO ABANDON - REMAINING OUT OF CANADA WITH INTENTION TO ABANDON - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 24, 27(2)(d), (e), 72

The appellant, a citizen of the United Kingdom, was granted landing in Canada in 1966. He married in Canada but his wife returned to her home in Scotland in 1968 and advised the appellant that she intended to remain in Scotland, whereupon the appellant quit his job, sold his furniture, gave up his apartment and travelled on a one-way ticket to Scotland where he remained for the next eight years. Then he and his wife separated, he returned to Canada as a visitor and when his visitor status expired, he was ordered deported for having remained in Canada after ceasing to be a visitor and for having been convicted of offences under the Criminal Code. He claimed to be a returning resident.



CAI  
MI 81  
- I52

# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613)236-9766

No. 27

Date June 25, 1981

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall



**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

27.1	79-1224	Nicolini, Anita Gisèle v. Minister of Employment and Immigration
27.2	80-6145	Bhatti, Avtar Singh v. Minister of Employment and Immigration
27.3	80-1033	Romeo, Maria (née Crimi) v. Minister of Employment and Immigration
27.4	80-6025	Sandhu, Manjit Kaur v. Minister of Employment and Immigration
27.5	79-6194	Thandi, Jarnail Singh v. Minister of Employment and Immigration
27.6	80-9150	Grewal, Gurdev Singh v. Minister of Employment and Immigration
27.7	80-9056	Tai, Doris Adina v. Minister of Employment and Immigration
27.20	77-9131	Little, Ronit v. Minister of Employment and Immigration

#### REFUGEES

27.8	77-1161	Sylvestre, Waldeck v. Minister of Employment and Immigration
27.9	79-1237	Iyar, Tharoshuni Arjunanan (Veronica)
27.10	79-1166	Billias, Panagiotis v. Minister of Employment and Immigration
	79-1167	Billia, Evangelina v. Minister of Employment and Immigration
27.11	79-1192	Serrano-Jerez, Ismael Enrique v. Minister of Employment and Immigration
	79-1193	Serrano, Elsa Angelica v. Minister of Employment and Immigration
27.12	79-9101	Fuentes, Mario Benito (Leiva) v. Minister of Employment and Immigration
27.13	80-9159	Naredo (Arduengo), Fernando Alfonso and Arduengo, Neives del Carmen San Martin Salazar v. Minister of Employment and Immigration

#### DEPORTATION ORDERS

27.8	77-1161	Sylvestre, Waldeck v. Minister of Employment and Immigration
27.14	78-9045	Bakir, Omar Ahmad Mohammed v. Minister of Employment and Immigration
27.15	80-9146	Tattoli, Giovanni v. Minister of Employment and Immigration
27.16	79-1243	Mercier, Rachelle v. Minister of Employment and Immigration
27.17	74-7046	Baky, Osama Abdel v. Minister of Employment and Immigration

#### APPEALS BY MINISTER

27.18	80-1005	Minister of Employment and Immigration v. White, Michelle Hope
27.19	80-9276	Minister of Employment and Immigration v. Singh, Tarlok

#### MOTIONS

27.3	80-1033	Romeo, Maria (née Crimi) v. Minister of Employment and Immigration
27.20	77-9131	Little, Ronit v. Minister of Employment and Immigration

#### PROCEDURE

27.3	80-1033	Romeo, Maria (née Crimi) v. Minister of Employment and Immigration
------	---------	--

#### JURISDICTION OF BOARD

27.5	79-6194	Thandi, Jarnail Singh v. Minister of Employment and Immigration
27.15	80-9146	Tattoli, Giovanni v. Minister of Employment and Immigration
27.20	77-9131	Little, Ronit v. Minister of Employment and Immigration

#### EVIDENCE

27.10	79-1166	Billias, Panagiotis v. Minister of Employment and Immigration
	79-1167	Billia, Evangelina v. Minister of Employment and Immigration

27.1 Anita Gisèle Nicolini v. Minister of Employment and Immigration

SPONSORSHIP - PERSON SPONSORED HAD FAILED TO OBTAIN A VISA BEFORE APPEARING AT A PORT OF ENTRY - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 79

The appellant sponsored an application for permanent residence made by her husband while he was in Canada. It was refused because her husband had failed to obtain a visa before appearing at a port of entry. The appellant had married her husband, a citizen of Jamaica, in Canada and a child was born of their marriage.

**Held:** Appeal dismissed. The refusal is valid in law. As to the existence of compassionate or humanitarian considerations, although the marriage was validly contracted and there is a child born whose father is the sponsored applicant, the appellant testified that the family unit was never very sound. She and her husband quarrel, her husband has had several conflicts with the law and the appellant has but slight hope as to his possible rehabilitation. He was, in fact, incarcerated at the time of the hearing of the appeal. We have, in this case, the external structure of a family unit only. I am convinced the sponsored husband will not be able to adapt to Canadian society. In addition, the appellant testified she was willing to accompany her husband to Jamaica if he was not admitted to Canada.

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiseleur	<b>Case heard:</b>
Montreal, September 3, 1980	<b>Judgment pronounced:</b> September 3, 1980
J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loiseleur	<b>Reasons by:</b>
<b>no.:</b> 79-1224	<b>Counsel:</b> M.A. Kulba, Esq., for the respondent.
	<b>Docket</b>

---

27.2 Avtar Singh Bhatti v. Minister of Employment and Immigration

SPONSORSHIP - PROOF OF AGE, IDENTITY AND FAMILY RELATIONSHIP - ACCOMPANYING DEPENDANT - WHETHER LESS THAN TWENTY-ONE YEARS OF AGE - RELEVANT DATE FOR DETERMINING AGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 2(1)

The appellant sponsored his father's and accompanying dependants' admission to Canada as permanent residents from India. One of the dependants was refused, owing to lack of proof of her age, identity and family relationship.

**Held:** Appeal dismissed. At the outset of the appeal, counsel for the appellant established the dependant's birth date by filing her birth certificate. The dependant's Application for Permanent Residence bears a date stamp showing that it was filed in New Delhi twenty-six days after her twenty-first birthday. The birth certificate established that she was over twenty-one years of age at the time of her application and was therefore inadmissible since she was no longer a dependant.

<b>Coram:</b> C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard	<b>Case heard:</b>
Vancouver, January 7, 1981	<b>Judgment pronounced:</b> January 7, 1981
C.M. Campbell (in English; 2 pp.), concurred in by W.M. Hlady and B. Howard	<b>Reasons by:</b>
<b>no.:</b> 80-6145	<b>Counsel:</b> D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.
	<b>Docket</b>

---

27.3 Maria Romeo (née Crimi) v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF ONE ACCOMPANYING DEPENDANT WOULD CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - PROCEDURE - MOTION TO WITHDRAW SPONSORSHIP OF INADMISSIBLE DEPENDANT

**PROCEDURE - SPONSORSHIP - MOTION TO WITHDRAW SPONSORSHIP OF INADMISSIBLE DEPENDANT**

**MOTION - SPONSORSHIP - WITHDRAWAL OF SPONSORSHIP OF INADMISSIBLE DEPENDANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)**

The appellant sponsored an application for permanent residence made by her parents and their accompanying dependants. One of the dependants only was refused, on the basis that his admission would cause excessive demands on health services in Canada. Counsel for the appellant brought a motion at the hearing of the appeal in order to withdraw the sponsorship with respect to the application of the inadmissible dependant.

**Held:** Motion granted, appeal allowed. The respondent did not oppose the motion. The appeal is allowed in law as the prohibitions set out in the refusal letter do not apply to the remaining sponsored applicants.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiseleur **Case heard:** Montreal, October 8, 1980 **Judgment pronounced:** October 8, 1980 **Reasons by:** J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loiseleur **Docket no.:** 80-1033 **Counsel:** A. Romeo, Esq., for the appellant; M.A. Kulba, for the respondent.

---

**27.4 Manjit Kaur Sandhu v. Minister of Employment and Immigration**

**SPONSORSHIP - NO SATISFACTORY EVIDENCE TO ESTABLISH THAT ONE OF SPONSORED APPLICANTS UNDER TWENTY-ONE YEARS OF AGE - TRANSITIONAL - IMMIGRATION ACT, R.S.C. 1970, C. 1-2 (repealed), S. 5(t) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, PART I (revoked), S. 36**

The appellant sponsored the applications for permanent residence in Canada of her parents and siblings pursuant to the Immigration Act (repealed). Following the proclamation of the Immigration Act, 1976, one sister was refused on the basis that there was no satisfactory evidence to establish that she was under twenty-one years of age.

**Held:** Appeal dismissed. If it can be established that the father or mother of the appellant's sister was over sixty years of age and that she was under twenty-one years of age on September 2, 1976, the date of the sponsorship application, then she is admissible. If her parents were not over sixty years of age on that date, then they became admissible on April 10, 1978 (the date of proclamation of the Immigration Act, 1976); and if she was then under twenty-one years of age she is admissible as an accompanying dependant. On the sponsorship application the birthdate of the sister is shown as March 30, 1956. On her application for permanent residence it is shown as November 3, 1953. If she was born in 1953 she is not admissible under any circumstances as a dependant. If she was born in March, 1956 she is only admissible as an accompanying dependant if her father or mother was over sixty years of age on September 2, 1976. No conclusive documentation was provided to establish the birthdates of either of these people.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard **Case heard:** Vancouver, January 9, 1981 **Judgment pronounced:** January 9, 1981 **Reasons by:** C.M. Campbell (in English; 5 pp.), concurred in by W.M. Hlady and B. Howard **Docket no.:** 80-6025 **Counsel:** U. Dosanjh, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

27.5 Jarnail Singh Thandi v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL IN RESPECT OF APPLICATION FOR LANDING OF ACCOMPANYING DEPENDANT ONLY - JURISDICTION OF BOARD - WHETHER BOARD HAS AUTHORITY TO DECIDE QUESTION RELATING TO ITS JURISDICTION - WHETHER APPEAL LIES TO BOARD FROM REFUSAL IN RESPECT OF APPLICATION FOR LANDING OF ACCOMPANYING DEPENDANT ONLY

JURISDICTION OF BOARD - SPONSORSHIP - REFUSAL IN RESPECT OF APPLICATION FOR LANDING OF ACCOMPANYING DEPENDANT ONLY - WHETHER BOARD HAS AUTHORITY TO DECIDE QUESTION RELATING TO ITS JURISDICTION - WHETHER APPEAL LIES TO BOARD FROM REFUSAL IN RESPECT OF APPLICATION FOR LANDING OF ACCOMPANYING DEPENDANT ONLY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3, 9(3), 19(2)(d), 30(1), 33(1), (2), 59(1), 79(1)(b), (2) - IMMIGRATION REGULATIONS, 1978, SS. 2(3), 4(d), 6, 27(1) - IMMIGRATION REGULATIONS, PART I (revoked), S. 31(1)(d), (e)

The appellant sponsored applications for permanent residence in Canada of his parents and their accompanying dependants, the appellant's brother and sister. Only the brother was refused. The respondent challenged the jurisdiction of the Board to hear the appeal, in that the appellant's brother was an accompanying dependant rather than a member of the family class and section 79(1)(b) of the Act refers to a refusal to approve an application for landing on the grounds that the member of the family class does not meet the requirements of the Act or Regulations. The respondent submitted that in the present case the member of the family class did meet the requirements of the Act and the Regulations and therefore there was no right of appeal pursuant to section 79(2) of the Act.

**Held:** Appeal dismissed. Section 59(1) of the Act provides that the Board has the right to decide a question in relation to its own jurisdiction. The respondent's argument is not supported by the thrust of the Act. An application to sponsor an application by a member of a family class may also include dependants of the member of the family class and an application on behalf of the dependants is part of and does not stand separately from the application by the member of the family class. The appeal flows from a refusal of the application which occurs when one or more persons listed on the application are refused. Therefore the appellant has the right of appeal in respect of his brother, an accompanying dependant. The refusal, however, is in accordance with the law.

<b>Coram:</b> C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard Vancouver, January 12, 1981	<b>Judgment pronounced:</b> January 12, 1981	<b>Case heard:</b>
<b>B. Howard</b> (in English; 8 pp.), concurred in by C.M. Campbell and W.M. Hlady		<b>Reasons by:</b>
<b>no.:</b> 79-6194	<b>Counsel:</b> A.J. Lee, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.	<b>Docket</b>

---

27.6 Gurdev Singh Grewal v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - ADOPTED SON - VALIDITY OF ADOPTION - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 79 - IMMIGRATION REGULATIONS, 1978, S. 2(1)

The appellant sponsored the application for permanent residence in Canada made by his adopted son in India. It was refused on the ground that the sponsoree was not a member of the family class in that he was not under thirteen years of age at the time he was adopted.

**Held:** Appeal allowed on legal and equitable grounds. The Regulations provide that, for an adopted son to be considered within the family class, he must be adopted before he attains the age of thirteen. The sponsoree's year of birth is 1960. A Deed of Adoption dated 1976 recites that the sponsor adopted the sponsoree in 1972 when the latter was about twelve years old and that a ceremony of the giving and taking in adoption had taken place as prescribed in the Hindu customary law. The refusal is grounded on the fact that the effective date of adoption was the date of the Deed of Adoption. However, the record contains the written opinion of an Indian advocate that the adoption became a valid adoption when the ceremony was completed and that the law does not require the execution of a deed. All the law requires is that the person adopting has the capacity and right to adopt, the person giving in adoption has the capacity to do so and the person adopted is capable of being taken in adoption. In the present case, all the aforesaid conditions existed when the actual ceremony of giving and receiving was performed, and the sponsoree was then under thirteen years of age.

Jawanda, Jagdip Singh v. M.E.I. (I.A.B. 79-9176), Weselak, Davey, Teitelbaum, May 27, 1980 (See CLIC, No. 18.7, September 19, 1980).

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw  
**Toronto, January 20, 1981**      **Judgment pronounced:** January 20, 1981  
**A.B. Weselak (in English; 5 pp.), concurred in by U. Benedetti and G. Tisshaw**      **Case heard: Reasons by:**  
**no.: 80-9150**      **Counsel:** C.C. Hoppe, Barrister and Solicitor, for the appellant;      **Docket**  
**L. Williams, Esq., for the respondent.**

---

**27.7**      **Doris Adina Tai v. Minister of Employment and Immigration**

**SPONSORSHIP - PERSON SPONSORED UNABLE TO FULFIL REQUIREMENTS OF ACT OR REGULATIONS - HAD NOT PROVEN ADMISSION WOULD NOT BE CONTRARY TO ACT OR REGULATIONS - HAD NOT ANSWERED QUESTIONS TRUTHFULLY - WHETHER VALID GROUNDS FOR REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 41(1)**

The appellant sponsored her husband's application for permanent residence in Canada, which was refused on the grounds that the husband fell within an inadmissible class, being unable to fulfil the requirements of the Act or Regulations, he had not proven that his admission to Canada would not be contrary to the Act or Regulations as he had failed to establish sincere intentions with respect to the sponsorship and he had not answered truthfully all questions put to him by a visa officer.

**Held:** Appeal allowed in law. Section 19(2)(d) of the Act merely provides that an immigrant seeking admission to Canada must fulfil the requirements and conditions of the Act and Regulations. It contains no prohibitionary ground respecting entry. Section 8(1) merely provides that the onus of proving the admissibility of a person is upon such person and also contains no specific prohibition with regard to entry. Finally, there is nothing in the refusal letter to indicate what questions the sponsored person had failed to answer truthfully, and therefore this ground is not valid as it does not comply with section 41(1) of the Regulations which provides that the refusal must contain "... a summary of the information on which his reason for refusal is based."

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw      **Case heard:**  
**Toronto, January 20, 1981**      **Judgment pronounced:** January 20, 1981      **Reasons by:**  
**A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and G. Tisshaw**      **Docket**  
**no.: 80-9056**      **Counsel:** R. Bailey, Esq., for the appellant; L. Williams, Esq., for the respondent.

---

**27.8**      **Waldeck Sylvestre v. Minister of Employment and Immigration**

**REFUGEE - CLAIM TO REFUGEE STATUS BY REASON OF POLITICAL ACTIVITIES**

**DEPORTATION ORDER - NON-RESIDENT - CLAIM TO REFUGEE STATUS - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), SS. 5(p), (t), 7(1)(c) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3 (repealed), SS. 11, 14, 15(1)(b)(i) - IMMIGRATION REGULATIONS, PART I (revoked), S. 27(2)(b)(i)**

The appellant was ordered deported pursuant to the Immigration Appeal Board Act (repealed). He did not contest the legality of the deportation order but claimed to be a refugee protected by the Geneva Convention. He is a citizen of Haiti. He was involved in clandestine political activities against the Haitian government as a member of PUCH (Parti Unifié des Communistes Haitiens). His mother was arrested by the secret police of Duvalier, held for eight days and questioned about her son's activities. The appellant went into hiding after the release of his mother, and left Haiti one week later believing his life was in danger in view of the fact that two colleagues who were also politically involved had been arrested. He paid a third person to obtain a passport for him and to help him depart from the country.

**Held:** Appellant is determined to be a Convention refugee, deportation order is quashed and appellant is granted landing. Although he was an active member of PUCH, the appellant was never arrested in Haiti. He was only seriously interrogated once. He came into Canada as a visitor and remained in Canada as a visitor for six months before making any claim to refugee status. He renewed his passport without difficulty. However the testimony of his colleague, himself a claimant in Canada for recognition as a refugee, was compelling and uncontested. There is also the fact of the arrest of the appellant's mother. The weight of the evidence taken as a whole must be held to support the appellant's claim that he is a refugee.

Diocaretz Urrutia, Pablo Eric v. M.E.I. (I.A.B. 78-1014), Glogowski, Houle, Legaré, April 12, 1978 (See CLIC, No. 1.35, March 20, 1979).

**Coram:** J.V. Scott (Chairman), R. Tremblay and E. Teitelbaum  
**Judgment pronounced:** November 24, 1978  
**Case heard:** Montreal, January 24, 1979  
**Reasons by:** J.V. Scott (in English; 14 pp.), concurred in by R. Tremblay and E. Teitelbaum  
**Docket no.:** 77-1161  
**Counsel:** J. Westmoreland Traoré, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

27.9

Tharoshuni Arjununan (Veronica) Iyar

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE - WELL-FOUNDED FEAR - CREDIBILITY

PROCEDURE - REFUGEE - REDETERMINATION - RECORD OF CONVICTION FILED - WHETHER BOARD MAY CONSIDER SUCH EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 45, 70, 71 - IMMIGRATION REGULATIONS, 1978, S. 40(1)

The applicant, a citizen of Durban, South Africa, claimed to have a well-founded fear of persecution by reason of her Indian race. She was admitted to Canada initially as a visitor. She testified that she was never persecuted on account of her Indian origin and was not denied access to education or employment, although she was obliged to attend a school especially for Indians, was required to live in a special district of Durban and was not allowed to vote. Among the documents filed with the Board was a record of conviction for theft relating to the applicant.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant has not testified to any incident, with the possible exception of a "massacre" which occurred thirty years ago, that gives any grounds for saying that her "fear", if it exists at all, is well-founded -- an essential element in the definition of refugee. Nothing has happened to her personally, her parents still reside in Durban where her father is employed and where she was employed and received a good education. At most, her testimony indicates some discrimination against Indians, but discrimination of the kind she describes is not persecution. Where racial persecution is in issue, a mere feeling of unease, without any evidence of actual harassment or maltreatment by reason of race is not evidence of persecution. Before coming to Canada, the applicant visited many Western European countries without claiming refugee status, and therefore the Board doubts the bona fides of her claim.

The record of conviction filed with the Board should not be before it. In determining whether a refugee claim shall proceed to a full oral hearing, the Board is restricted to an examination of the documentation provided for in section 70(2) of the Act and nothing else. This Court has therefore not considered the record of conviction, which is not identified and is of such a nature as to be totally irrelevant to a refugee claim.

Mingot v. M.M.I. (1973) 8 I.A.C. 351/368; M.M.I. v. Diaz Fuentes [1974] 2 F.C. 331 (C.A.); Maslej v. M.M.I. [1977] 1 F.C. 194 (C.A.); Lugano v. M.M.I. [1977] 2 F.C. 605 (C.A.); Tapia v. M.E.I. [1979] 2 F.C. 468 (C.A.); Fuentes García, Rolando Vicente v. M.E.I. (F.C.A., no. A-123-79), Heald, Ryan, Kelly, July 26, 1979 (not yet reported).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and G. Loisel  
**Judgment pronounced:** January 15, 1980  
**Case heard:** Montreal, January 15, 1980  
**Reasons by:** J.V. Scott (in English; 9 pp.), concurred in by J.-P. Houle and G. Loisel  
**Docket no.:** 79-1237.

---

27.10

Panagiotis Billias v. Minister of Employment and Immigration  
Evangelina Billia v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RELIGION

EVIDENCE - REFUGEE - REDETERMINATION - ANNUAL REPORT OF AMNESTY INTERNATIONAL FILED AT HEARING - VALUE OF SUCH EVIDENCE - GREEK CONSTITUTION OF 1975, ART. 3.1, 13, 14 - GREEK LAW 731/77, ART. 1, 2, 3 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The male and female applicants are husband and wife, citizens of Greece. Both are Jehovah's Witnesses, claiming refugee status on the basis of religion. The male applicant alleged that, after he became a Jehovah's Witness, he had many problems at the university where he was a medical student, in that he was not allowed to write his examinations or was failed if he did write them. He stated that he was unable to get work commensurate with his education because of his religion. He was an active Jehovah's Witness, selling religious literature door to door, teaching the Bible and attending public meetings. He was arrested and released after four hours on one occasion when he was selling religious literature. He testified that it is against the law in Greece to proselytize; he explained that the official state religion in Greece is Greek Orthodox.

**Held:** Applications having been allowed to proceed, applicants are determined not to be Convention refugees. The male applicant was by no means a credible witness. He established no more than the existence of a climate of hostility to Jehovah's Witnesses in Greece. The incidents he described, if true, are not such as to amount to persecution by or with the tacit consent of the Greek government. There is no evidence that Jehovah's Witnesses are prevented from worshipping in accordance with the tenets of their religion. By law, proselytism - of any religion - is forbidden but such a law, of general application, cannot be held to be persecution nor does it specifically refer to Jehovah's Witnesses. Furthermore, the male applicant's conduct is not consistent with that of a genuine claimant to Convention refugee status. He first came to Canada as a visitor and applied for permanent residence but his application was refused. He waited almost fourteen months before making any claim to refugee status. There is no doubt on the evidence that the applicant left Greece in order to evade military service. Although his counsel filed part of Amnesty International's Annual Report relating to Greece which detailed the imprisonment of Jehovah's Witnesses who refused on religious grounds to perform military service, this report is not evidence of anything and is of little value in a judicial process involving the establishment of refugee status by an individual. The applicant has failed to prove he has a well-founded fear of being persecuted by the Greek authorities because of his religion. Since the female applicant based her claim on that of her husband, it is also determined that she is not a Convention refugee.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and G. Loiselle **Case heard:** Montreal, May 12, 1980 **Judgment pronounced:** July 7, 1980 **Reasons by:** J.V. Scott (in English; 13 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket no.:** 79-1166 and 79-1167 **Counsel:** S. Moreau, Barrister and Solicitor, for the applicants; M.A. Kulba, Esq., for the respondent.

---

27-11 Ismael Enrique Serrano-Jerez v. Minister of Employment and Immigration  
Elsa Angelica Serrano v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicants, husband and wife, citizens of Chile, claim refugee status by reason of their political opinion. The male applicant was a member of a group of leftist parties supporting President Allende. He also joined a union of professors and employees at the university where he was employed. On two occasions the military visited his home after the coup d'Etat in 1973 and as he was not there they threatened his wife and broke his furniture. As a result he decided to live away from his residence and visit from time to time. While he was visiting, the military entered his house and seized him. He was detained for two months and subjected to interrogation and torture. A few months later he continued his clandestine activities. Three years later he was again detained for ten days and tortured. The following year, while participating in a demonstration in support of political prisoners he was imprisoned, tortured, given electric shocks and released after twelve days. With the help of a priest he obtained money and a passport and left for Canada. The female applicant remained in Chile until she was threatened with imprisonment and torture by the military, when she too left for Canada with her two children.

**Held:** Applications having been allowed to proceed, applicants are determined to be Convention refugees. A friend testified at the hearing that he and the male applicant were involved in propaganda work until the applicant left for Canada. He confirmed the arrest of the applicant in 1973 as he was the one who took the applicant into his home for a month following the applicant's release from prison. Another witness testified as to the applicant's involvement in the university union. The male applicant's testimony was confirmed by his wife. Both applicants were credible witnesses who testified as to plausible facts.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski and G. Loiselle **Case heard:** Montreal, September 24, 1980 **Judgment pronounced:** September 25, 1980 **Reasons by:** G. Loiselle (in French; 6 pp.), concurred in by J.-P. Houle and F. Glogowski **Docket no.:** 79-1192 and 79-1193 **Counsel:** S. Bless, Barrister and Solicitor, for the applicants; J.R. St-Louis, Esq., for the respondent.

27.12 Mario Benito (Leiva) Fuentes v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 71

The applicant, a citizen of Chile, joined the Socialist Party in 1960 and became a member of the Lefeerte cell led by Juan Torres. He was active in the election campaign of Allende. On September 11, 1973, the day of the military coup in Chile, the store which he owned in Valparaiso was raided by the military and he was knocked unconscious. The next day he was interrogated as to the names of Party members and beaten. In November, he was tortured for six days, then released on condition that he report periodically to the authorities. He fled Valparaiso, returned six months later and worked for himself as a repairman. Through a friend he managed to obtain a passport and left Chile on the advice of the widow of Juan Torres, whose husband had been murdered that month. Apparently she had seen a list of names, which included the applicant's, of people considered enemies of the State. When the applicant arrived in Canada, he did not claim refugee status immediately as he was fearful of discussing his situation.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. Two doctors testified at the hearing that the story of political persecution told by the applicant was compatible with his anxiety symptoms (post traumatic neurosis). Their testimony was persuasive and helped to reinforce the applicant's credibility.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** Toronto, April 15 and October 7, 1980 **Judgment pronounced:** November 13, 1980 **Reasons by:** E. Teitelbaum (in English; 6 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 79-9101 **Counsel:** S. Mircheff, Student-at-Law, for the applicant; J.D. Taylor, Esq., for the respondent.

27.13

Fernando Alfonso Naredo (Arduengo) and  
Neives del Carmen San Martin Salazar Arduengo v.  
Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES, 1951, CHAP. 1, ART. 1F - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 70

The applicants, husband and wife, are citizens of Chile. They arrived in Canada travelling on valid Chilean passports seeking admission as visitors. The male applicant became actively involved in the intelligence service of DICAR, a special section of the secret service police involved in clandestine operations. For three years, from 1974 through 1977, he sought out persons suspected of being against the government. As a member of DICAR, he was part of a team involved in kidnapping, torturing and killing people. In April, 1977 he was dismissed from DICAR as he was no longer trusted by them. The female applicant joined the national police of Chile and was transferred to DICAR and then to DINAM, the national intelligence service. She resigned in April, 1977. Both applicants claim they are considered a security risk by DICAR and will be removed if they return to Chile.

**Held:** Applications having been allowed to proceed, applicants are determined not to be Convention refugees.

B.M. Suppa

DICAR knew the applicants' plans to leave the country yet did not attempt to stop them. The applicants have not established that they would be subject to persecution if they were to return to Chile. They were active agents of DICAR, working for the organization in support of the regime existing after the 1973 coup and participating in brutal activities against those who rightfully claim refugee status.

D. Davey

The applicants hold no strong political beliefs and do not claim to fear persecution because of political philosophy or involvement. The facts on which their fear is based must be plausible. It became clear at the hearing that the male applicant was considered a security risk by DICAR on account of his health. In the nine to ten months between the time they no longer worked for DICAR and their departure for Canada they were never arrested. While their lack of a strongly-held political opinion has not barred them from being found to be political refugees, their failure to establish plausible facts on which to base a fear of persecution has. Furthermore, the applicants testified that they participated in kidnappings, surveillance and brutality. Their actions, clearly against the spirit of the Convention and an abuse of human rights, set them outside those who can properly seek asylum.

Re Inzunza and M.E.I. (1979) 103 D.L.R. (3d) 105 (F.C.A.); M.E.I. v. Hudnik [1980] 1 F.C. 180 (C.A.).

**Coram:** D. Davey (Vice-Chairman), B.M. Suppa and G. Tisshaw **Case heard:** Toronto, October 1, 3 and 14, 1980 **Judgment pronounced:** November 20, 1980 **Reasons by:** B.M. Suppa (in English; 7 pp.), concurred in by D. Davey and G. Tisshaw; and D. Davey (in English; 7 pp.), concurred in by B.M. Suppa and G. Tisshaw **Docket no.:** 80-9159 **Counsel:** B. Jackman, Barrister and Solicitor, for the applicants; W.A. MacIntyre, Esq., for the respondent.

---

27.14 Omar Ahmad Mohammed Bakir v. Minister of Employment and Immigration

DEPORTATION ORDER - NOT A CANADIAN CITIZEN, NOT DOMICILED IN CANADA - CONVICTED OF CRIMINAL OFFENCE - REHEARING OF APPEAL - TRANSITIONAL - CRIMINAL CODE, R.S.C. 1970, C. C-34, S. 294(b) - INTERPRETATION ACT, R.S.C. 1970, C. I-23, SS. 35, 36 - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), SS. 18(1)(e)(ii), (2), 25 - IMMIGRATION APPEAL BOARD ACT, S.C. 1966-67, C. 90 (repealed), SS. 14, 15, 21 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(d), 125(3)

The appellant, a permanent resident without Canadian domicile, was ordered deported in February, 1978, pursuant to the Immigration Act (repealed) following his conviction for an offence under the Criminal Code. The appeal was first heard on July 31, 1978 when the Board had before it a certificate issued under section 21 of the Immigration Appeal Board Act (repealed) stating it would be contrary to the national interest for the Board, in the exercise of its discretion, to stay or quash the deportation order.

At the first hearing, the Immigration Act, 1976 was applied and the appeal allowed (see CLIC, No. 3.1, June 27, 1979). The Federal Court of Appeal subsequently ordered that the legality of the deportation order must be determined in light of the former Immigration Act. The appeal again came on for hearing. The certificate under section 21 of the Immigration Appeal Board Act was filed by the Board, but counsel for the appellant submitted the certificate was now functus and could only operate so as to constrain the Board's discretionary powers during the appeal to which it was filed in the first place; that the certificate was abolished by the enactment of the Immigration Act, 1976; that the present hearing was a new hearing rather than a continuation of the first hearing, so that the certificate had ceased to have effect at the termination of the first hearing.

**Held:** Appeal dismissed, deportation order directed to be executed as soon as practicable. The deportation order is valid. The Board is of the opinion that this hearing is not a second appeal, simply a continuation of the first appeal and therefore all matters before the Board for consideration at the time of the first appeal are before it for consideration at the second hearing of the appeal. Therefore, the certificate under section 21 of the Immigration Appeal Board Act is a valid and subsisting certificate and is in full force and effect. This certificate precludes the Board from giving the appellant consideration under section 15 of the Immigration Appeal Board Act.

Clarkson v. Snider (1885) 10 O.R. 561 (C.A.).

**Coram:** A.B. Weselak (Vice-Chairman), D. Davey and E. Teitelbaum  
Toronto, February 21, 1980  
**Judgment pronounced:** March 6, 1980  
A.B. Weselak (in English; 6 pp.), concurred in by D. Davey and E. Teitelbaum  
**Case heard:**  
**Reasons by:**  
**Docket**  
**no.:** 78-9045  
**Counsel:** C.L. Campbell, Barrister and Solicitor, for the appellant;  
W.A. MacIntyre, Esq., for the respondent.

---

27.15 Giovanni Tattoli v. Minister of Employment and Immigration

DEPORTATION ORDER - RETURNING RESIDENT OF CANADA - ABANDONMENT OF RESIDENCE - JURISDICTION OF BOARD - DETERMINATION OF STATUS - WHETHER BOARD HAS JURISDICTION TO DETERMINE STATUS OF PERSON ALREADY IN CANADA

JURISDICTION OF BOARD - DEPORTATION ORDER - DETERMINATION OF STATUS - WHETHER BOARD HAS JURISDICTION TO DETERMINE STATUS OF PERSON ALREADY IN CANADA - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 24, 27(2)(b), (g), 32(5)(b), 72 - IMMIGRATION REGULATIONS, 1978, S. 18(1)

The appellant, an Italian citizen, was ordered deported following an inquiry at which he was found to be a person who had engaged in employment in Canada without a valid employment authorization and a person who had entered and remained in Canada by misrepresentation of a material fact. The appellant claimed to be a permanent resident. The respondent challenged the jurisdiction of the Board to hear the appeal in that, unlike the circumstances in Webber and Selby, the appellant had not been excluded at a port of entry.

**Held:** Appeal dismissed. The Board's jurisdiction to determine if a person has maintained his status of permanent resident is the same whether a person is excluded at the port of entry for non-possession of a visa or inland as a person illegally living or working in Canada. Having considered the evidence, the Board finds that the appellant is not a permanent resident and therefore has no right of appeal pursuant to section 72 of the Act.

Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979); Re M.E.I. and Selby (1980) 110 D.L.R. (3d) 126 (F.C.A.); M.E.I. v. Hass, Manfred (I.A.B. 79-6130), Scott, Campbell, Teitelbaum, February 6, 1980 (See CLIC, No. 17.11, July 21, 1980); Adams, Janice May v. M.E.I. (I.A.B. 78-9455), Weselak, Benedetti, Petrie, October 3, 1978 (See CLIC, No. 3.14, June 27, 1979).

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and R. Tremblay **Case heard:** Toronto, September 10, 1980 **Judgment pronounced:** September 10, 1980 **Reasons by:** D. Davey (in English; 10 pp.), concurred in by E. Teitelbaum and R. Tremblay **Docket no.:** 80-9146 **Counsel:** L. Waldman, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

**27.16** Rachelle Mercier v. Minister of Employment and Immigration

**DEPORTATION ORDER - PERMANENT RESIDENT - DEPORTATION ORDER RESULTING FROM MINISTER'S APPEAL - DEEMED APPEAL FROM DEPORTATION ORDER - ALL THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 72, 73, 75(3)**

A deportation order was pronounced by the Board against the appellant, a permanent resident of Canada, following the Minister's appeal from the decision of an adjudicator that she was not a person who had been granted landing in Canada by reason of misrepresentation of a material fact (see CLIC, No. 22.8, January 29, 1981). The appellant appealed from the deportation order made against her, as section 75(3) of the Immigration Act, 1976 entitled her to do, on equitable grounds.

**Held:** Appeal allowed, deportation order quashed. The appellant is satisfactorily established in Canada. She is steadily and gainfully employed. She has a son, a Canadian citizen, who needs medical attention which he can receive without charge in Canada. She has family in Canada and has no desire to live with her husband who resides in Haiti.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loisel **Case heard:** Montreal, November 17, 1980 **Judgment pronounced:** November 17, 1980 **Reasons by:** J.-P. Houle (in French; 4 pp.), concurred in by R. Tremblay and G. Loisel **Docket no.:** 79-1243 **Counsel:** D. Paquin, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

**27.17** Osama Abdel Baký v. Minister of Employment and Immigration

**DEPORTATION ORDER - REOPENING OF APPEAL - ORDERED DEPORTED FOLLOWING CRIMINAL CONVICTIONS IN CANADA - CREDIBILITY - ALL THE CIRCUMSTANCES OF THE CASE - EGYPTIAN MILITARY CODE, ART. 154 - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3 (repealed), SS. 11, 15(1)(a)**

The appellant, an Egyptian citizen, admitted to Canada as a permanent resident, had been ordered deported as a result of criminal convictions in Canada. His initial appeal to the Immigration Appeal Board was dismissed. He moved to reopen his appeal, claiming that he was a deserter from the Egyptian army and would be shot if he were returned to Egypt. The motion having been granted, his appeal was reopened.

**Held:** Appeal dismissed, deportation order directed to be executed as soon as practicable. The appellant's testimony that he served in the Egyptian army and deserted is not credible. There is no reason to believe that the Egyptian authorities, civil or military, have the slightest interest in punishing or persecuting him. He has not established that he is a deserter. In considering all the circumstances of this case, we cannot ignore the fact that although the appellant has been in this country for eight years, he has spent almost the whole of this period in prison. He was convicted of two crimes of violence. He never claimed asylum as a military deserter until making his motion to reopen.

**Coram:** J.V. Scott (Chairman), W. Hlady and B. Howard **Case heard:** Vancouver, November 17 and 18, 1980 **Judgment pronounced:** December 15, 1980 **Reasons by:** J.V. Scott (in English; 9 pp.), concurred in by W. Hlady and B. Howard **Docket no.:** 74-7046 **Counsel:** R.A. McPhee, Barrister and Solicitor, for the appellant; C.J. Dickey, Esq., for the respondent.

---

**27.18** Minister of Employment and Immigration v. Michelle Hope White

APPEAL BY MINISTER - WHETHER ADJUDICATOR ERRED IN FINDING THE RESPONDENT A PERMANENT RESIDENT - WHETHER ADJUDICATOR ERRED IN NOT MAKING REMOVAL ORDER AGAINST RESPONDENT - ABANDONMENT OF PERMANENT RESIDENCE - INTENTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 3(c), 24, 25, 26(2), 27(2)(e), 73

The Minister appealed the decision of an adjudicator that the respondent was a permanent resident of Canada and had the right to remain in Canada. The respondent, a citizen of Jamaica, had been admitted to Canada as a landed immigrant in 1965. In 1970, at age twelve, she accompanied her divorced father back to Jamaica, leaving her mother and brother behind in Canada. In 1975 and again in 1977, she came back to Canada to visit her mother and brother. Her Jamaican passport was stamped "visitor" on both occasions. She entered Canada again at age twenty-one, showed her passport stamped "landed immigrant" to the Immigration authorities and was admitted without qualification. She was thereafter subjected to an inquiry and was found to be a returning resident of Canada.

**Held:** Appeal dismissed. The two elements of section 24(1) of the Act are the fact of departure from and remaining outside Canada and the intent to abandon Canada as the place of permanent residence. When the respondent left Canada, she was forced to follow her father. Residence is made up of fact and intention, the fact of abode and the intention of remaining. The absences from Canada of the respondent have been fully explained and were not motivated by any intention to abandon her permanent residence in Canada.

R. Tremblay (dissenting)

In my view, when the respondent went back to Jamaica in 1970 at age twelve, she regained her domicilium originis. The circumstances of this case are difficult to analyze because the respondent, although present in court, did not testify before the Board in order to clarify some elements of the evidence. In my opinion, the respondent came into Canada as a visitor and changed her mind in the course of time. If she had tried to revive her resident status when she came back to Canada in 1977, my opinion would have been different. The animus cannot be presumed. The onus of proof is on the respondent to establish that she did not abandon Canada as her place of permanent residence. I would allow the appeal.

M.E.I. v. Hass, Manfred (I.A.B. 79-6130), Scott, Campbell, Teitelbaum, February 6, 1980 (See CLIC, No. 17.11, July 21, 1980); Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979); Alexander, Magdi Halim v. M.E.I. (I.A.B. 78-9138), Weselak, Petrie, Teitelbaum, July 18, 1978 (See CLIC, No. 2.4, April 25, 1979); Goncalves, Laurinda Rodrigues and children v. M.M.I. (I.A.B. 74-10411), Glogowski, Russell, Poworoznyk, August 13, 1975; Patel, Mahendrakumar Haribhai v. M.E.I. (I.A.B. 78-9163), Weselak, Benedetti, Petrie, January 9, 1979 (See CLIC, No. 5.18, August 3, 1979); Selby, Brendan Leeson v. M.E.I. (I.A.B. 79-6047), Glogowski, Campbell, Teitelbaum, May 24, 1979 (See CLIC, No. 16.14, June 23, 1980); Re M.E.I. and Selby (1980) 110 D.L.R. (3d) 126 (F.C.A.); Adams, Janice May v. M.E.I. (I.A.B. 78-9455), Weselak, Benedetti, Petrie, October 3, 1978 (See CLIC, No. 3.14, June 27, 1979); Kemp v. Kemp 16 N.Y.S. 2d 26.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay (dissenting) and G. Loiselle **Case heard:** Montreal, September 23, 1980 **Judgment pronounced:** October 22, 1980 **Reasons by:** G. Loiselle (in English; 12 pp.), concurred in by J.-P. Houle **Dissenting reasons by:** R. Tremblay (in English; 7 pp.) **Docket no.:** 80-1005 **Counsel:** J.R. St-Louis, Esq., for the appellant; P. Hudon, Barrister and Solicitor, for the respondent.

---

27.19

Minister of Employment and Immigration v. Tarlok Singh

APPEAL BY MINISTER - RESPONDENT ELUDING INQUIRY UNDER IMMIGRATION ACT, 1976 - CONTINUOUS PRESENCE IN CANADA NECESSARY FOR FINDING OF ELUSION - BURDEN OF PROOF - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(h), 20(1), 27(2)(f), 30(2), 73

The Minister appealed the decision of an adjudicator who found that the respondent was not a person who had eluded inquiry under the Act and therefore was not subject to removal from Canada. The respondent had failed to appear at a resumption of his inquiry following an adjournment thereof. As a result, another inquiry was commenced based on the respondent's elusion from the initial inquiry. The adjudicator determined that it was necessary for the respondent to be in Canada continuously from the time he failed to appear at the resumption of the first inquiry until the completion of the second inquiry. The case presenting officer submitted that, although the respondent had alleged, at the time of his apprehension, that he had not been in Canada continuously, this was not sufficient evidence that the respondent had indeed left Canada. The adjudicator found there was insufficient evidence to establish the respondent had remained in Canada continuously and the burden of so establishing lay on the Minister.

**Held:** Appeal allowed, deportation order pronounced against the respondent. No direct evidence was given by the respondent as to his alleged absence from Canada. The Board therefore is of the opinion that the adjudicator had no acceptable evidence upon which to base his decision that the respondent was not in Canada at the material times.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, November 18, 1980 **Judgment pronounced:** November 18, 1980 **Reasons by:** A.B. Weselak (in English; 5 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 80-9276 **Counsel:** J.D. Taylor, Esq., for the appellant.

---

27.20

Ronit Little v. Minister of Employment and Immigration

MOTION - REOPENING OF APPEAL - SPONSORSHIP APPEAL - DENIAL OF COUNSEL OF CHOICE AT FIRST HEARING - EVIDENCE AVAILABLE WHICH WAS NOT AVAILABLE AT FIRST HEARING - WHETHER GROUNDS ESTABLISHED TO WARRANT REOPENING

JURISDICTION OF BOARD - TRANSITIONAL - REOPENING OF SPONSORSHIP APPEAL INITIALLY MADE UNDER SECTION 17 OF THE IMMIGRATION APPEAL BOARD ACT, S.C. 1966-67 (repealed) - DOCTRINE OF LACHES

SPONSORSHIP - MOTION TO REOPEN APPEAL - JURISDICTION OF BOARD - TRANSITIONAL - IMMIGRATION APPEAL BOARD ACT, S.C. 1966-67, C. 90 (repealed), S. 17

The applicant filed a motion to reopen her appeal, initially made pursuant to section 17 of the Immigration Appeal Board Act, S.C. 1966-67 (repealed), on the grounds that she had been denied counsel of her choice at the hearing of her appeal since she did not realize her counsel was not a lawyer, and that further evidence was available which was not available by due diligence at the first hearing of her appeal. The further evidence consisted of the removal by the Immigration Act, 1976 of any prohibition relating to a conviction for a crime of moral turpitude; of the fact that five years had passed since the applicant's husband had been convicted of a criminal offence; and of the fact that the applicant, who was not employed at the time of her appeal, was now fully employed.

**Held:** Motion dismissed. The first ground must fail as the applicant knew of her right to counsel and was represented at her appeal by counsel of her choice. With respect to the second ground, the applicant's husband was refused admission to Canada because he had been convicted of crimes of moral turpitude. The applicant alleged she would have the opportunity at a second hearing of her appeal, to make submissions regarding the rehabilitation of her husband, on humanitarian and compassionate grounds, in view of the less stringent provisions of the Immigration Act, 1976. However, if the Board were to allow the appeal to be reopened, the Immigration Appeal Board Act would be applicable in determining the outcome of the appeal. If the applicant wishes to benefit from the passage of time or from the new Act, she has only to re-file her sponsorship application. Moreover, the lapse of time since the criminal convictions and the applicant's employment were facts which were not available at the time of the first hearing. The second ground must also fail.

The Board is satisfied that it has jurisdiction to reopen an appeal under section 17 of the Immigration Appeal Board Act where the new evidence to be submitted meets the criteria as set out in Chan, which it does not meet in the present case.

The respondent alleged that the applicant, by not taking any action for three years, was now barred from doing so by the doctrine of laches. However, as the applicant only became aware of the circumstances which gave rise to this application in May, 1980, the doctrine of laches does not apply.

R. v. Butler (1973) 11 C.C.C. (2d) 381 (Ont. C.A.); Re Vinaroo (1968) 66 D.L.R. (2d) 736 (B.C.C.A.); Re Kokorinis (1967) 62 D.L.R. (2d) 438 (B.C.C.A.); Lyle v. M.E.I. (1979) 102 D.L.R. (3d) 190 (F.C.A.); Bakir, Omar Ahmad Mohammed v. M.E.I. (F.C.A., no. A-566-78), Urie, Ryan, Kelly, June 27, 1979 (not yet reported); Chan v. M.M.I. 6 I.A.C. 429/438; Manki, Zaheer Ali v. M.E.I. (I.A.B. 74-7090), Campbell, Legaré, Tremblay, February 25, 1977 (See CLIC, No. 1.14, March 20, 1979); Grillas v. M.M.I. [1972] S.C.R. 577, 23 D.L.R. (3d) 1.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, January 13, 1981 **Judgment pronounced:** January 13, 1981 **Reasons by:** D. Davey (in English; 9 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 77-9131 **Counsel:** B. Knazan, Barrister and Solicitor, for the applicant; M. Prue, Esq., for the respondent.

---

ISSN 0225-1620

LAG

Lacking # 28



CA1  
M281  
- I 52

# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 29

Date August 17, 1981

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

29.1	79-1213	Auguste, Maud (née Lemaine) v. Minister of Employment and Immigration
29.2	80-1160	Weste, Ulrich v. Minister of Employment and Immigration
29.3	80-9014	Brooks, Jennifer Patricia v. Minister of Employment and Immigration
29.4	80-6059	Jassal, Dalbir Singh v. Minister of Employment and Immigration
29.5	80-6201	Lail, Sawinder Kaur v. Minister of Employment and Immigration
29.6	80-6108	Ceballos, Gerry Brillantes v. Minister of Employment and Immigration
29.7	80-6239	Judge, Mahan Singh v. Minister of Employment and Immigration
29.8	80-9143	Grewal, Ravendra v. Minister of Employment and Immigration
29.9	79-6201	Turnbull, William Sibbald v. Minister of Employment and Immigration
29.10	80-9221	Kaur, Kulwant v. Minister of Employment and Immigration
29.11	80-6091	Chou, Yao Heng (Ricky) v. Minister of Employment and Immigration
29.14	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration

#### REFUGEE

29.12	80-1034	Teegne, Kidane v. Minister of Employment and Immigration
-------	---------	--

#### DEPORTATION ORDER

29.13	80-9092	Hall, Gladstone Percival v. Minister of Employment and Immigration
-------	---------	--

#### MOTION

29.14	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration
-------	---------	---

#### APPEAL BY MINISTER

29.15	80-1101	Minister of Employment and Immigration v. Edouard, Duquesne
-------	---------	---

#### EVIDENCE

29.1	79-1213	Auguste, Maud (née Lemaine) v. Minister of Employment and Immigration
29.4	80-6059	Jassal, Dalbir Singh v. Minister of Employment and Immigration
29.7	80-6239	Judge, Mahan Singh v. Minister of Employment and Immigration
29.9	79-6201	Turnbull, William Sibbald v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

29.14	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration
-------	---------	---

29.1 Maud Auguste (née Lemaine) v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - SPONSOR PRODUCING MEDICAL EVIDENCE TO REBUT REFUSAL - WHETHER REFUSAL VALID IN LAW - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

EVIDENCE - SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - SPONSOR PRODUCING MEDICAL EVIDENCE TO REBUT REFUSAL - WHETHER REFUSAL VALID IN LAW - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79

The appellant sought to have her sponsorship appeal brought on for hearing and to have her appeal heard if the application were granted. She had sponsored her husband's application for permanent residence in Canada which was refused on the basis that her husband's admission would cause or might reasonably be expected to cause excessive demands on health or social services. The sponsor appealed the refusal and at the hearing her counsel objected that the record was incomplete and the reasons for refusal incomprehensible as there was no medical documentation in support of the refusal other than a coded medical certificate. The respondent contended that the medical information relating to the refusal was confidential notwithstanding the sponsored applicant's consent to the release of such information. The Board treated the objection made by appellant's counsel as an oral motion, granted the motion and ordered the respondent to perfect the record. The appellant then moved to have her appeal brought on again for hearing, hence the present combined motion and appeal. At the motion, the respondent filed the letter of a doctor from Medical Services, Health & Welfare Canada to perfect the record.

**Held:** Application granted, appeal allowed in law and equity. Filed on the record are independent medical reports from two doctors who examined the sponsoree. They state in precise terms that the sponsoree's heart condition is stable and if surgery were needed, it would not be required for another fifteen years. The refusal and the medical report of the respondent's doctor, on the other hand, are not based on cogent evidence. The appellant has adduced evidence that her husband's admission would not cause excessive demands on health services and therefore the appeal is allowed in law. Considering the evidence as a whole, there are also sufficient grounds to warrant the granting of special relief in equity.

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Montreal, December 2, 1980	<b>Case heard:</b> <b>Judgment pronounced:</b> December 2, 1980
G. Loiselle (in French; 9 pp.), concurrent in by J.-P. Houle and R. Tremblay	<b>Reasons by:</b> <b>Docket</b>
<b>no.:</b> 79-1213	<b>Counsel:</b> J. Westmoreland-Traoré, Barrister and Solicitor, for the applicant, appellant; J.R. St-Louis, Esq., for the respondent.

---

29.2 Ulrich Weste v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF SPONSOREE WOULD OR MIGHT REASONABLY BE EXPECTED TO CAUSE EXCESSIVE DEMANDS ON HEALTH OR SOCIAL SERVICES - SPONSOREE ACTUALLY ASSUMING COST OF HEALTH CARE AND COVERED BY PROVINCIAL HEALTH PLAN - WHETHER DEMANDS ON HEALTH SERVICES THEREBY EXCESSIVE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79(2)(a), (b)

The appellant sponsored the application for permanent residence made by his mother. It was refused on the basis that his mother suffered from a condition described as organic brain syndrome which would cause excessive demands on health or social services. The sponsoree was present in Canada legally on a Minister's permit and paid the expenses connected with her residence in an institution for elderly persons. She was entitled to free medical treatment under a provincial health plan. Counsel for the appellant contested the validity of the refusal on the ground that the evidence indicated the sponsoree is not and has not been a burden on health or social services.

**Held:** Appeal allowed in equity. The evidence that the sponsoree is permanently institutionalized due to organic brain syndrome was not challenged by the appellant's counsel. It is common knowledge that all provincial medicare plans are heavily subsidized by the Federal and Provincial governments from taxes paid by all residents of Canada. All that medical officers, pursuant to section 19(1)(a)(ii) of the Immigration Act, 1976 are required to do is to diagnose whether a person seeking permanent admission to Canada is suffering from a certain disease and whether the admission of this person might reasonably be expected to cause excessive demands on health or social services. Accordingly, the financial circumstances of an applicant for landing and the settlement arrangements made by him or his family are not relevant to the medical doctor's decision. Therefore, the refusal was made in accordance with the law.

However, there exist compassionate considerations that warrant the granting of special relief: the close and affectionate relationship between the sponsor's family and the sponsoree, the age of the sponsoree and the need of moral support from the sponsor and his family, which support the sponsoree would be denied if she had to leave Canada. Although technically she might reasonably be expected to cause excessive demands on health or social services, the sponsoree's age, present financial circumstances and the sincere undertaking voiced by the sponsor do not indicate that the Canadian community at large would be responsible to any great extent for her welfare.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and G. Loiselle  
Fredericton, January 20, 1981  
**Judgment pronounced:** January 20, 1981  
**Case heard:**  
F. Glogowski (in English; 8 pp.), concurred in by R. Tremblay and G. Loiselle  
**Reasons by:**  
**no.:** 80-1160  
**Counsel:** D.S. Green, Barrister and Solicitor, for the appellant;  
D. Taylor, Esq., for the respondent.  
**Docket**

---

29.3 Jennifer Patricia Brooks v. Minister of Employment and Immigration

SPONSORSHIP - SECOND OCCASION SPONSOREE HAD SUBMITTED APPLICATION FOR PERMANENT RESIDENCE - REFUSAL BASED, INTER ALIA, ON SPONSOREE'S FAILURE TO ANSWER TRUTHFULLY QUESTIONS PUT BY VISA OFFICER - ONLY QUESTIONS RESPECTING SECOND APPLICATION RELEVANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 41(b)

The appellant sponsored the application for permanent residence in Canada of her spouse. The application was refused on the grounds that the sponsoree had failed to establish his sincere and responsible intentions with respect to the sponsorship and had not answered truthfully all questions put to him by a visa officer. The appellant had previously sponsored her husband at the time when he was her fiancé but the application had been refused. The instant appeal arose from the appellant's second attempt at sponsorship of this individual.

**Held:** Appeal allowed in law. The appeal at bar flows from the refusal of the second application and therefore what transpired at the time of the interview regarding the first application is no longer relevant. The only question to be answered is whether the sponsoree was truthful at the second examination. In this respect, the refusal as to which questions put to the sponsoree were not answered truthfully. In addition, a refusal based on the lack of bona fides of the parties contracting marriage is not a proper ground for refusal. Therefore, both grounds of refusal are invalid.

Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Houle, Glogowski, Tremblay, February 7, 1979 (See CLIC, No. 4.13, June 29, 1979).

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and G. Tisshaw  
Toronto, February 23, 1981  
**Judgment pronounced:** February 24, 1981  
**Case heard:**  
F. Glogowski (in English; 7 pp.), concurred in by U. Benedetti and G. Tisshaw  
**Reasons by:**  
**no.:** 80-9014  
**Counsel:** K. Gillese, Esq., for the appellant; L. Williams, Esq., for the respondent.  
**Docket**

---

29.4 Dalbir Singh Jassal v. Minister of Employment and Immigration

SPONSORSHIP - DEPENDANT - EVIDENCE ESTABLISHING DEPENDANT UNDER TWENTY-ONE YEARS OF AGE - PROOF OF VALIDITY OF DOCUMENT - REVISED BIRTH CERTIFICATE

EVIDENCE - SPONSORSHIP - PROOF OF VALIDITY OF DOCUMENT - REVISED BIRTH CERTIFICATE - REGISTRATION OF BIRTHS & DEATHS ACT 1969 (UNION TERRITORY OF DELHI) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79(2)(a)

The appellant sponsored the application for permanent residence of his parents, sister and brother. The brother was refused on the basis that he had not provided satisfactory evidence to establish he was under twenty-one years of age. The evidence submitted as proof of age consisted, inter alia, of two birth certificates: a nameless certificate indicating that a male child son of the appellant's father was born on April 9, 1958 and a second certificate revised in October, 1979 to indicate the brother's name.

**Held:** Appeal allowed in law. As proof of his brother's age, the appellant produced a nameless birth certificate which had been revised to indicate the brother's name at a time when the processing of the sponsorship application was underway. To justify this action, the appellant produced a text entitled "Manual of Instructions for Registration of Births & Deaths in Delhi, "issued in accordance with the Registration of Births & Deaths Act 1969 of the Union Territory of Delhi. Section 14 of that Act provides that it is not necessary to give the name of a child at the time of initial registration and the name may be entered by the registrar at any later date. It was accepted by the Court that the addition of the brother's name to the birth certificate had been effected in accordance with the Registration of Births & Deaths Act 1969.

**Coram:** A.B. Weselak (Vice-Chairman), B. Suppa and W.M. Hlady **Case heard:** Winnipeg, March 6, 1981 **Judgment pronounced:** March 6, 1981 **Reasons by:** W.M. Hlady (in English; 6 pp.), concurred in by A.B. Weselak and B. Suppa **Docket no.:** 80-6059  
**Counsel:** C.W. Lorenc, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

29.5 Sawinder Kaur Lail v. Minister of Employment and Immigration

SPONSORSHIP - DEPENDANT - NO SATISFACTORY EVIDENCE TO ESTABLISH THAT ONE OF SPONSORED DEPENDANTS UNDER TWENTY-ONE YEARS OF AGE - TRANSITIONAL - SPONSORSHIP APPLICATION MADE UNDER IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed) - REFUSAL BASED ON IMMIGRATION ACT, 1976 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(e), 5(1), 6(1)(a)

The appellant sponsored the admission to Canada of her father and his dependants in 1976 pursuant to the Immigration Act, R.S.C. 1970, c. I-2 (repealed). The appellant's brother was refused admission to Canada due to lack of satisfactory evidence establishing he was under twenty-one years of age. The refusal was made in accordance with the provisions of the Immigration Act, 1976 which had been proclaimed in force subsequent to the filing of the sponsorship application.

**Held:** Appeal dismissed in law. The age of the father was not established to be over sixty years at the time the sponsor made her application for his admission to Canada in 1976 as was required by the Immigration Act. He and his dependants became eligible to be sponsored pursuant to subsection 5(1) of the Immigration Regulations, 1978 on the date of proclamation of the Immigration Act, 1976, i.e. on April 10, 1978. The Board accepts that the date of birth of the appellant's brother is December 3, 1956. He was therefore over twenty-one years of age on April 10, 1978, the date the appellant acquired the right to sponsor her father and his dependants.

The Board cannot exercise its discretionary powers on the ground that there exist compassionate or humanitarian considerations in this appeal as the Board would thereby expand its discretion beyond the members of the family class.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and G. Loiselle  
Calgary, March 9, 1981  
**Judgment pronounced:** March 9, 1981  
**Case heard:**  
F. Glogowski (in English; 5 pp.), concurred in by R. Tremblay and G. Loiselle  
**Reasons by:**  
**no.:** 80-6201  
**Counsel:** J. De Paoli, Barrister and Solicitor, for the appellant;  
D.M. Hanbury, Esq., for the respondent.  
**Docket**

---

**29.6      Gerry Brillantes Ceballos v. Minister of Employment and Immigration**

**SPONSORSHIP - ADMISSION OF ACCOMPANYING DEPENDANT LIKELY TO CAUSE EXCESSIVE DEMANDS ON HEALTH OR SOCIAL SERVICES - EVIDENCE ADDUCED AT HEARING THAT DEPENDANT HEALTHY AND HAD HAD NO MAJOR ILLNESS - WHETHER REFUSAL VALID IN LAW - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79**

The appellant sponsored the application for permanent residence in Canada made by his father and accompanying dependants. One of the accompanying dependants was refused on medical grounds. In the record was a coded medical certificate alleging the dependant was inadmissible as he had a condition likely to cause demands on health or social services and containing a narrative statement that he might need vocational and educational training in Canada. At the hearing, the appellant produced report cards relating to the dependant indicating he was doing well in his school studies and two medical reports stating the dependant was healthy and had had no major illness.

**Held:** Appeal allowed in equity. The letter of refusal is valid in law, although the Board is of the opinion that it does not meet the spirit of the law in that under section 79 of the Immigration Act, 1976 the appellant is entitled to know the case he has to meet. However, in view of the evidence adduced by the appellant that his brother was normal and the fact that he was not provided with proper information to enable him to meet his case, the Board allows the appeal on humanitarian and compassionate grounds.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and G. Loiselle  
Calgary, March 10, 1981  
**Judgment pronounced:** March 10, 1981  
**Case heard:**  
F. Glogowski (in English; 5 pp.), concurred in by R. Tremblay and G. Loiselle  
**Reasons by:**  
**no.:** 80-6108  
**Counsel:** D.M. Hanbury, Esq., for the respondent.  
**Docket**

---

**29.7      Mahan Singh Judge v. Minister of Employment and Immigration**

**SPONSORSHIP - SPONSOREE REFUSED ON MEDICAL GROUNDS - MEDICAL REPORTS FILED BY APPELLANT - WEIGHT TO BE ACCORDED SUCH EVIDENCE - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS**

**EVIDENCE - SPONSORSHIP - SPONSOREE REFUSED ON MEDICAL GROUNDS - MEDICAL REPORTS FILED BY APPELLANT - WEIGHT TO BE ACCORDED SUCH EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2, 19(1)(a)(i), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)**

The appellant sponsored the application for permanent residence made by his father, mother and two sisters, citizens of India. The application was refused on the basis that the mother suffered from a tubercular condition, a health impairment likely to entail danger to public health or safety in Canada. At the appeal hearing, the appellant submitted several medical reports of recent date from independent medical doctors and X-ray clinics in India. The reports dealt with personal and private consultations and all suggested the mother's disability had been cured.

**Held:** Appeal dismissed in law and equity. Sections 2 and 19(1)(a) of the Immigration Act, 1976 make clear that admissibility on the basis of health is to be determined by a medical officer, concurred in by another, both of whom are recognized as such by the Minister of National Health and Welfare as medical officers for the purposes of the Act. The initial departmental medical assessment has not been challenged and this assessment has not been revised. The refusal therefore is in accordance with the law.

With respect to the Board's jurisdiction in equity, counsel for the appellant argued that it would be compassionate to allow this family to enter Canada since opportunities and circumstances in Canada are so much more attractive than in India. This is essentially an economic argument which has never been accepted by the Board as a ground for a decision in equity. The appellant by his support and his sponsorship of his parents and sisters is clearly acting in their interests but there was no evidence of a relationship of such a compelling nature as to justify a decision in equity that would separate his mother, father and two sisters from the balance of the family in India.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard **Case heard:** Edmonton, February 5, 1981 **Judgment pronounced:** March 13, 1981 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by W.M. Hlady and B. Howard **Obiter Dictum by:** C.M. Campbell (in English; 2 pp.) **Docket no.:** 80-6239 **Counsel:** M. Lyons, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

**29.8                    Ravendra Grewal v. Minister of Employment and Immigration**

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS INADMISSIBLE AS NO EVIDENCE PRODUCED THAT DEPENDANT UNDER TWENTY-ONE YEARS OF AGE - WHETHER REFUSAL VALID - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79**

The appellant sponsored the application for permanent residence in Canada made by his parents and siblings. The application was refused because of the father's inadmissibility, based on his failure to produce documentation establishing his admissibility, his failure to answer truthfully questions put to him by a visa officer and his failure to provide satisfactory evidence to establish that one of his dependants was under twenty-one years of age.

**Held:** Appeal dismissed with respect to the dependant, allowed in equity with respect to the remaining sponsorees. As the appellant has not produced satisfactory proof that the dependant was under twenty-one years of age, the Board finds the refusal letter is valid with respect to her, and as she is a dependant and inadmissible, the refusal letter in general is a valid refusal letter. There are, however, such compassionate and humanitarian considerations as would justify the granting of special relief for the remaining sponsorees.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, March 18, 1981 **Judgment pronounced:** March 18, 1981 **Reasons by:** A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and G. Tisshaw **Docket no.:** 80-9143 **Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

---

**29.9                    William Sibbald Turnbull v. Minister of Employment and Immigration**

**SPONSORSHIP - SPOUSE - SPONSOREE ALLEGEDLY A PARTY TO A VALID MARRIAGE AT TIME OF MARRIAGE TO SPONSOR - EVIDENCE - PROOF OF PRIOR MARRIAGE**

**EVIDENCE - SPONSORSHIP - SPOUSE - SPONSOREE ALLEGEDLY A PARTY TO A VALID MARRIAGE AT TIME OF MARRIAGE TO SPONSOR - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 27(2)(b), (e), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 18**

The appellant sponsored the application for permanent residence in Canada made by his wife, a citizen of the Philippines. She was refused in that she had failed to produce satisfactory evidence to establish that she was a spouse as defined in section 2(1) of the Immigration Regulations, 1978. It was alleged that the sponsoree was a party to a valid Filipino marriage at the time she married the appellant in Canada.

**Held:** Appeal allowed in law. The appellant, under oath, submitted a written statement to the effect that his wife had gone through a form of marriage ceremony in the Philippines under pressure from her parents but that the marriage was never registered and there was no certificate of marriage. The respondent failed to obtain an official record of a marriage allegedly affecting the sponsoree, a marriage recorded in a certificate of birth (relating to a child of the sponsoree) filed in the record. Statements made by the sponsoree at her immigration inquiry and various documents in the record support the appellant's contention that the prior relationship was a common-law one. It was accordingly not proven that the sponsoree was a party to a valid marriage at the time she married the appellant. Furthermore, in the record are copies of a certificate of marriage relating to the marriage performed between the appellant and the sponsoree.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard  
**Case heard:** Vancouver, March 20, 1981  
**Judgment pronounced:** March 20, 1981  
**Reasons by:** W.M. Hlady (in English; 6 pp.), concurred in by C.M. Campbell and B. Howard  
**Docket no.:** 79-6201  
**Counsel:** D.M. Hanbury, Esq., for the respondent.

---

29.10      Kulwant Kaur v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOR UNABLE TO FULFIL UNDERTAKING AT TIME OF REFUSAL OF SPONSORED APPLICATION - SUBSEQUENTLY ABLE TO FULFIL UNDERTAKING - RELEVANT DATE FOR DETERMINING ABILITY TO FULFIL UNDERTAKING AND VALIDITY OF REFUSAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(iii)

The appellant sponsored the application for permanent residence of her mother, brothers and sister. The application was refused on the basis that the appellant was financially unable to fulfil the undertaking given on behalf of the sponsored individuals.

**Held:** Appeal allowed in law. At the time of assessment of her financial circumstances, the appellant was pregnant and unemployed and the family income was insufficient to meet the level required. The refusal letter was therefore valid at the time it was made. However, the Board is to consider the facts as they exist when the matter is before it. On the evidence, the appellant now meets the relevant requirements.

Lew v. M.M.I. [1974] 2 F.C. 700, 52 D.L.R. (3d) 639 (C.A.).

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and B.M. Suppa  
**Case heard:** Toronto, March 26, 1981  
**Judgment pronounced:** March 26, 1981  
**Reasons by:** D. Davey (in English; 2 pp.), concurred in by U. Benedetti and B.M. Suppa  
**Docket no.:** 80-9221  
**Counsel:** R.A. Sainaney, Barrister and Solicitor, for the appellant; D. Taylor, Esq., for the respondent.

---

29.11      Yao Heng (Ricky) Chou v. Minister of Employment and Immigration

SPONSORSHIP - ADMISSION OF DEPENDANT WOULD CAUSE OR MIGHT REASONABLY BE EXPECTED TO CAUSE EXCESSIVE DEMANDS ON HEALTH OR SOCIAL SERVICES - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 19(1)(a)(ii), (2)(d), 79(2)(b) - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant sponsored an application for permanent residence in Canada made by his parents and two brothers. One of the brothers was refused in that his admission would cause or might reasonably be expected to cause excessive demands on health or social services. The appellant had not seen his father in twenty years and his mother and a brother in almost six years.

**Held:** Appeal allowed on equitable grounds. At the hearing of the appeal, it became clear the refused brother was a mongoloid. The refusal letter is valid in law. However, section 3(c) of the Immigration Act, 1976 states as one of the objectives of the Act, "to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad." In the dislocation and separation of the sponsor's family over the past twenty years, we have a prime example of the situation this section was enacted to relieve. Additionally, the sponsor, his sister and aunt, all resident in Canada, strongly stated their commitment to support their relatives.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard **Case heard:**  
Vancouver, April 21, 1981 **Judgment pronounced:** April 22, 1981 **Reasons by:**  
W.M. Hlady (in English; 4 pp.), concurred in by C.M. Campbell and B. Howard **Docket**  
**no.:** 80-6091 **Counsel:** D. Jang; Barrister and Solicitor, for the appellant;  
T.D. Munn, Esq., for the respondent.

---

29.12 Kidane Tegegne v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE - DETERMINED TO BE  
REFUGEE "SUR PLACE" - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Ethiopia, claimed to be a refugee because of his race (Eritrean). He was working as a seaman for a Greek company, having left his country before the revolution took place there in 1974. He deserted his ship and asked for refugee status in Canada within a month of his desertion after the captain of the vessel threatened to send him back to Ethiopia.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee "sur place". It is common knowledge that the military coup in 1974 grew into a civil war verging on genocide. According to the testimony received at the hearing, it would seem the situation still exists. If social discrimination because of race is not persecution within the meaning of the Convention, a civil war directed against a minority race verging on genocide is without doubt evidence of racial persecution. As the situation developed in his country, the applicant realized that his freedom and his life would be in jeopardy if he returned to Ethiopia. The United Nations Convention applies to the applicant, who comes within the definition of refugee "sur place".

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
Montreal, February 25, 1981 **Judgment pronounced:** February 25, 1981 **Reasons by:**  
R. Tremblay (in English; 4 pp.), concurred in by J.-P. Houle and G. Loiselle **Docket**  
**no.:** 80-1034 **Counsel:** J.H. Grey, Barrister and Solicitor, for the applicant;  
J.R. St-Louis, Esq., for the respondent.

---

29.13 Gladstone Percival Hall v. Minister of Employment and Immigration

DEPORTATION ORDER - PERMANENT RESIDENT - CONVICTED OF OFFENCE UNDER CRIMINAL CODE - ALL  
THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS.  
27(1)(d)(i), 72(1)(b)

The appellant, a permanent resident of Canada for fifteen years, was ordered deported after having been convicted of an offence under the Criminal Code, namely theft under \$200, for which a term of imprisonment of more than six months had been imposed. He alleged that, having regard to all the circumstances of the case, he should not be removed from Canada.

**Held:** Appeal dismissed. On the evidence before it, the Board is satisfied that the deportation order was made in accordance with the Immigration Act, 1976 and Regulations. The appellant is twenty-five years of age and his criminal record lists ten convictions. In the past four years, he has spent seventeen months in jail and on four occasions he was on probation ranging from fifteen months to two years. It is clear from the evidence that only one factor is in favour of the appellant, namely, his fifteen years of residence in Canada. However, in these fifteen years he has achieved nothing. He has no assets, no trade, very low education by Canadian standards, no steady employment and no support from his parents, as his mother and father, knowing his plight, did not appear at the hearing of his appeal. Having regard to all the circumstances of the case, no grounds have been established to show cause why the appellant should not be removed from Canada.

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and G. Tisshaw  
**Toronto, January 28, 1981** **Judgment pronounced:** January 29, 1981  
**Reasons by:** F. Glogowski (in English; 10 pp.), concurred in by U. Benedetti and G. Tisshaw  
**Docket no.:** 80-9092 **Counsel:** B. Knazan, Barrister and Solicitor, for the appellant; M. Prue, Esq., for the respondent.

29.14

Mei-Chun Tsang v. Minister of Employment and Immigration

MOTION - SPONSORSHIP - PRODUCTION OF MEDICAL DOCUMENTS RELATING TO REFUSAL OF SPONSOREE - WHETHER BOARD HAS JURISDICTION TO ORDER PRODUCTION FROM RESPONDENT OR THIRD PARTY

JURISDICTION OF BOARD - SPONSORSHIP - APPLICATION FOR PRODUCTION OF MEDICAL DOCUMENTS - WHETHER BOARD HAS JURISDICTION TO ORDER PRODUCTION FROM RESPONDENT OR THIRD PARTY

SPONSORSHIP - REQUIREMENT THAT SPONSOR BE INFORMED OF REASONS FOR REFUSAL - WHETHER REQUIREMENT SATISFIED - ONTARIO MUNICIPAL BOARD ACT, R.S.O. 1960, C. 274, S. 37 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 65(2), 79(1) - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 33(1), (2)

The applicant to this motion is the appellant in a sponsorship appeal from the refusal of her father's application for permanent residence in Canada. The father's inadmissibility was based on the allegation that his admission would cause or might reasonably be expected to cause excessive demands on health or social services. The purpose of the motion was to obtain production from the respondent of all documents upon which the medical certificate of inadmissibility was based. The respondent alleged that the medical evidence requested was not in his possession or control and therefore could not be produced by him. The sponsoree had signed an authorization for release of medical information to counsel for the applicant but the Medical Services Branch of the Department of Health & Welfare refused to comply with the authorization on the basis of confidentiality.

In addition, it appeared that the sponsoree had been informed by letter of his refusal but there was no indication on the record that the sponsor had been informed of the reasons for refusal, as required by section 79(1) of the Immigration Act, 1976.

**Held:** Application dismissed without prejudice to another motion being made in the future. The Board is satisfied that the requirements of section 79(1) of the Act, that the sponsor shall be informed of the reasons for the refusal, were met in this particular case notwithstanding the fact that apparently the letter of refusal was never sent to the sponsor. There is no requirement in the Act as to how the sponsor shall be informed.

The Board is in full agreement with the applicant that she is entitled to know the case she will have to meet at the appeal hearing. The Board cannot order production from the respondent as the documents are not in his possession or control. On the other hand, the Board has, as regards production and inspection of documents, all such powers as are vested in a superior court of record and therefore has the authority to order production of relevant documents in possession of a third party. However, the present motion is premature as no notice of the application has been given to the third party from whom production is sought.

Deol, Charanjit v. M.E.I. (I.A.B. 79-9428), Davey, Teitelbaum, Suppa, December 1, 1980; Molina, Mario Angel (Riquelme) v. M.E.I. (I.A.B. 79-9363), Scott, Benedetti, Teitelbaum, July 9, 1980 (See CLIC, No. 22.6, January 29, 1981); Re Pasquale and Township of Vaughan [1967] 1 O.R. 417 (C.A.); McGillivray v. Cushing [1964] 2 O.R. 544 (H.C.J.); McLellan v. Tibo and The Queen [1974] 4 W.W.R. 652 (Sask. Q.B.).

**Coram:** F. Glogowski (Vice-Chairman), G. Tisshaw and B. Suppa **Case heard:** Toronto, February 3, 1981 **Judgment pronounced:** April 1, 1981 **Reasons by:** F. Glogowski (in English; 10 pp.), concurred in by G. Tisshaw and B. Suppa **Docket no.:** 80-9437  
**Counsel:** C.L. Rotenberg, Barrister and Solicitor, for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

29.15 Minister of Employment and Immigration v. Duquesne Edouard

APPEAL BY MINISTER - RESPONDENT ENTERED CANADA AS A VISITOR - VISITOR STATUS TERMINATED - SUBSEQUENTLY GRANTED MINISTER'S PERMIT - WHETHER DEPORTABLE AS OVERSTAYING VISITOR UPON CANCELLATION OF MINISTER'S PERMIT - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), S. 7(3) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 27(2)(e), 37(1)(b), (4), (5), (6), 45(1), 73, 75(2)

The Minister appealed from an adjudicator's decision that the respondent was not a person who had remained in Canada after ceasing to be a visitor and not a person against whom a removal order should be made. The respondent had been granted entry to Canada as a visitor. His visitor status terminated in July, 1979. In October, 1979 he was granted a Minister's permit for one year but before the expiry date it was cancelled and the respondent was requested to leave Canada. He did not leave as requested and was subjected to inquiry on the basis that he had entered Canada as a visitor and remained therein after ceasing to be a visitor.

**Held:** Appeal dismissed. The respondent is not a person who has remained in Canada after he has ceased to be a visitor. He was no longer a visitor as of July, 1979 and the granting of a Minister's permit does not reinstate visitor status. The permit itself does not grant a status. It has the effect of allowing a person who would otherwise be subject to removal to remain in Canada for a period of time. Upon expiry of the permit, the Minister could proceed in accordance with section 37(5) or (6) of the Immigration Act, 1976. The power is discretionary but may be exercised only by the Minister. The Minister directed the respondent to leave Canada pursuant to section 37(5) of the Act. The adjudicator and the Board are powerless as a result.

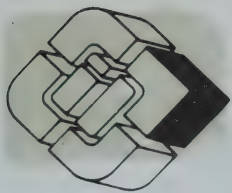
In re Supinder Singh Manhas and in re Immigration Act [1977] 1 F.C. 156 (T.D.).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** Montreal, February 26, 1981 **Judgment pronounced:** March 19, 1981 **Reasons by:** J.-P. Houle (in French; 7 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 80-1101 **Counsel:** S. Marcoux-Paquette, Barrister and Solicitor, for the appellant; R. LeBlanc, Barrister and Solicitor, for the respondent.

---







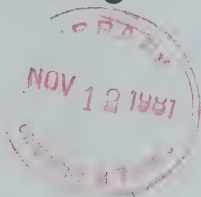
# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 30

Date September 28, 1981

## Notes of Recent Decisions rendered by the Immigration Appeal Board



by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



### SPONSORSHIPS

30.1	79-6195	Sandhu, Chhinder Singh v. Minister of Employment and Immigration
30.2	80-6381	Naidu, Nirmala Devi v. Minister of Employment and Immigration
30.3	80-9303	Kuthiala, Ashok Kumar v. Minister of Employment and Immigration
30.4	80-9396, 80-9306	Banait, Bhajan Singh v. Minister of Employment and Immigration
30.5	80-6012	Deol, Dilbag Singh v. Minister of Employment and Immigration
30.6	80-9188	Lal, William and Sushila v. Minister of Employment and Immigration
30.7	80-9380	Lewis, Linford v. Minister of Employment and Immigration
30.8	79-6276	Li, Pak v. Minister of Employment and Immigration

### REFUGEES

30.9	80-1145 79-1032	Aguilar Martinez, Noé v. Minister of Employment and Immigration Castaneda, Dora Alicia Aguilar v. Minister of Employment and Immigration
30.10	80-9046	Torres-Leal, Eliana del Carmen v. Minister of Employment and Immigration
30.11	80-6220	Contreras-Gutierrez, Hector Eduardo v. Minister of Employment and Immigration
30.12	79-1191	Fariás, Luis Francisco Lobos v. Minister of Employment and Immigration
30.13	80-6174	Espejo, Aurora Fernandez v. Minister of Employment and Immigration

### MOTION

30.14	75-10227	Frangipane, Giovanni v. Minister of Manpower and Immigration
-------	----------	--

### EVIDENCE

30.3	80-9303	Kuthiala, Ashok Kumar v. Minister of Employment and Immigration
30.4	80-9396, 80-9306	Banait, Bhajan Singh v. Minister of Employment and Immigration
30.6	80-9188	Lal, William and Sushila v. Minister of Employment and Immigration

### JURISDICTION OF BOARD

30.4	80-9396, 80-9306	Banait, Bhajan Singh v. Minister of Employment and Immigration
------	---------------------	--

30.1 Chhinder Singh Sandhu v. Minister of Employment and Immigration

SPONSORSHIP - SPONSORSHIP OF PARENTS UNDER AGE SIXTY - SPONSORSHIP APPLICATION MADE WHEN SPONSOR WAS PERMANENT RESIDENT BUT NOT YET CANADIAN CITIZEN - SPONSOR BECOMING CANADIAN CITIZEN WHILE APPLICATION PENDING - WHETHER ELIGIBLE TO SPONSOR PARENTS UNDER SIXTY - IMMIGRATION ACT 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79(2) - IMMIGRATION REGULATIONS, 1978, SS. 4(c), 5(1) - IMMIGRATION REGULATIONS, PART I (revoked), S. 31(d)

The appellant sponsored the application for permanent residence made by his father and accompanying family members. The father was refused as he had not established that he had reached the age of sixty nor had he proven the age of two dependants. At the time of making his sponsorship application, the appellant was a permanent resident but not yet a Canadian citizen.

**Held:** Appeal dismissed in law. The sponsor has a right of appeal as he was a Canadian citizen at the time of filing his appeal. However, for the sponsorship application to be viable under the Immigration Act, 1976 the sponsor must be a Canadian citizen at the date of his application. The appellant was not eligible to sponsor his parents as they were under age sixty and he was not a Canadian citizen at the time of his application.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard **Case heard:** Vancouver, February 13, 1981 **Judgment pronounced:** March 2, 1981 **Reasons by:** B. Howard (in English; 5 pp.), concurred in by C.M. Campbell and W.M. Hlady **Docket no.:** 79-6195 **Counsel:** D. Persad, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

---

30.2 Nirmala Devi Naidu v. Minister of Employment and Immigration

SPONSORSHIP - ACCOMPANYING DEPENDANT LESS THAN AGE TWENTY-ONE AT TIME APPLICATION FOR PERMANENT RESIDENCE FILED - NO LONGER UNDER AGE TWENTY-ONE WHEN VISA REFUSED - OPERATIVE DATE FOR DETERMINING ADMISSIBILITY AS ACCOMPANYING DEPENDANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(d), 6(1)(a)

The appellant sponsored the application for permanent residence made by her mother and accompanying dependants. One of the dependants was refused on the basis that she had attained the age of twenty-one when her mother's visa was issued and she was therefore no longer a dependant as defined in section 2(1) of the Immigration Regulations, 1978 and was not on account of that fact entitled to a visa to enable her to accompany her mother to Canada.

**Held:** Appeal allowed in law. The substance of the refusal letter is that the accompanying dependant must be under twenty-one years of age at the time of the issuance of the visa. This requirement is not set out in such terms in either the Immigration Act, 1976 or the Immigration Regulations, 1978. Since the proclamation of the Act and the Regulations the Board, in the absence of anything more specific in the Regulations, has consistently accepted the date of the application by the sponsoree for admission to Canada as the date on which an unmarried son or daughter must be under twenty-one years of age to be accepted as a dependant of the member of the family class being sponsored. The refused dependant in this case was under twenty-one when the application was filed.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** Vancouver, April 27, 1981 **Judgment pronounced:** May 1, 1981 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by R. Tremblay and G. Loiselle **Docket no.:** 80-6381 **Counsel:** D.P. Pandia, Esq., for the appellant; C.J. Dickey, Esq., for the respondent.

---

30.3 Ashok Kumar Kuthiala v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - PROOF OF RELATIONSHIP TO SPONSOR - EVIDENCE - BLOOD SAMPLES ESTABLISHING PLAUSIBILITY OF FAMILIAL RELATIONSHIP

EVIDENCE - SPONSORSHIP - PROOF OF RELATIONSHIP TO SPONSOR - BLOOD SAMPLES ESTABLISHING PLAUSIBILITY OF FAMILIAL RELATIONSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant sponsored the application for permanent residence of his parents and his brother. Their refusal was based on failure to establish their relationship to the sponsor.

Held: Appeal allowed in law. At the appeal hearing, a haematologist testified as an expert witness on behalf of the appellant. The expert witness concluded, as a result of his examination of blood samples taken from the sponsor and sponsorees, that the plausibility of familial relationship was 99.93%. The Board is reasonably satisfied that the blood tests, as certified by the expert, establish familial relationship and thus the refusal is invalid.

Coram: A.B. Weselak (Vice-Chairman), E. Teitelbaum and B.M. Suppa Case heard: Toronto, April 8, 1981 Judgment pronounced: April 8, 1981 Reasons by: A.B. Weselak (in English; 3 pp.), concurred in by E. Teitelbaum and B.M. Suppa Docket no.: 80-9303 Counsel: C.C. Hoppe, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

30.4 Bhajan Singh Banait v. Minister of Employment and Immigration

SPONSORSHIP - ADOPTED SON - FOREIGN ADOPTION - EFFECTIVE DATE OF ADOPTION

EVIDENCE - SPONSORSHIP - PROOF OF FOREIGN LAW - FOREIGN ADOPTION - EFFECTIVE DATE OF ADOPTION

JURISDICTION OF BOARD - NOTICE OF APPEAL FILED PRIOR TO SPONSOR'S RECEIPT OF REFUSAL LETTER BUT FOLLOWING SPONSOREE'S RECEIPT OF REFUSAL - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, (INDIA), SS. 11(i), 16 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant sponsored an application for permanent residence made by his adopted son in India. The application was refused because the sponsor had not proven the sponsoree to be his legally adopted son. The sponsor had filed his appeal before receiving the letter refusing the application.

Held: Appeal allowed in law. The refusal had been communicated to the sponsoree prior to the date on which the sponsor filed his notice of appeal. Clearly there was a refusal giving rise to this appeal, distinguishing this case from Francois, Pamela v. M.E.I. where there was never a refusal of any kind.

The appellant went through a ceremony of adoption in India in 1976 whereby he adopted his brother's son, then aged twelve. The ceremony was held in accordance with the Sikh religion. An adoption deed was registered in 1978, a year following the birth of the appellant's first child, a son. A written opinion from an Indian advocate was filed, stating that the adoption was validly made at the time of the ceremony in 1976. The appellant then had no son of his own and thus the adoption did not offend the provisions of the Hindu Adoptions and Maintenance Act, 1956. Although the letter of opinion cannot be described as proof of foreign law in the correct legal sense, neither the expertise of the writer nor the contents were contested. In the absence of any evidence to the contrary, the appellant must be held to have established a prima facie case for the validity of the adoption as of the date of the ceremony.

François, Pamela v. M.E.I. (I.A.B. 78-1074), Houle, Tremblay, Loisel, May 7, 1979 (See CLIC, No. 9.1, November 26, 1979).

**Coram:** J.V. Scott (Chairman), E. Teitelbaum and G. Tisshaw **Case heard:** Toronto, March 5, 1981 **Judgment pronounced:** March 5, 1981 **Reasons by:** J.V. Scott (in English; 7 pp.), concurred in by E. Teitelbaum and G. Tisshaw **Docket no.:** 80-9396, 80-9306 **Counsel:** M.M. Green, Q.C., for the appellant; L. Williams, Esq., for the respondent.

---

**30.5                    Dilbag Singh Deol v. Minister of Employment and Immigration**

**SPONSORSHIP - REFUSAL BASED ON GROUND THAT SPONSOREE NOT AN IMMIGRANT - WHETHER VALID REFUSAL - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 19(2)(c), (d), 79**

The appellant sponsored the application for permanent residence in Canada of his father, mother and sister. The father was refused on the basis that he was not an immigrant as defined in section 2(1) of the Immigration Act, 1976, in that he was not seeking lawful permission to come into Canada to establish permanent residence.

**Held:** Appeal dismissed in law and equity. The father made a clear and positive statement to the visa officer that he and his wife would visit their son in Canada for a period not to exceed one year. Although he denied his intention to return to India he also stated he would not have left that country if he had been a rich man and he clearly intends to preserve his family base in India. Therefore he is not an immigrant as defined in the Act. To extend equity after determining the sponsor not to be an immigrant would only allow for the entry into Canada of his daughter as a permanent resident and so endorse the purpose of the deception which the Board determines to exist.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard **Case heard:** Vancouver, February 11, 1981 **Judgment pronounced:** February 11, 1981 **Reasons by:** C.M. Campbell (in English; 4 pp.), concurred in by W.M. Hlady and B. Howard **Docket no.:** 80-6012 **Counsel:** W.P. Beck, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

---

**30.6                    William and Sushila Lal v. Minister of Employment and Immigration**

**SPONSORSHIP - MEMBERS OF THE FAMILY CLASS - SPONSORS APPOINTED GUARDIANS OF SPONSOREES BY INDIAN COURT - WHETHER SPONSOREES THEREBY ADOPTED WITHIN MEANING OF IMMIGRATION REGULATIONS, 1978 - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS**

**EVIDENCE - SPONSORSHIP - PROOF OF FOREIGN LAW - WRITTEN LEGAL OPINION ACCEPTED AS EVIDENCE OF LAW OF INDIA - GUARDIANS AND WARDS ACT, 1890 (INDIA), S. 7 - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (INDIA) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2)(a) - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(g)**

The appellants sponsored the applications for permanent residence of their three alleged children, all residing in India. The children are the issue of a friend of the sponsors, there being no blood relationship between them and the sponsors. In 1978, while visiting India, the sponsors were appointed guardians of the children by a Judge of the District of Delhi, India pursuant to the Guardians and Wards Act, 1890. They allege the children thereby became their adopted children and were sponsorable as such.

**Held:** Appeal dismissed in law. A written legal opinion appearing in the record states that only Hindus have a law governing adoption, the Hindu Adoptions and Maintenance Act, 1956. Thus, Hindus excepted, adoption is not possible in India. As the sponsors in this case are Christians, they could not benefit from the aforementioned Act. The children have not been adopted within the meaning of the term as defined in section 2(1) of the Immigration Regulations, 1978. While the Board finds that compassionate or humanitarian considerations exist, it has no authority to exercise its discretion in this respect as to do so would be to widen the members of the family class beyond the scope defined in the Act and Regulations.

**Coram:** A.B. Weselak (Vice-Chairman), B.M. Suppa and G. Tisshaw **Case heard:** Toronto, May 4, 1981 **Judgment pronounced:** May 4, 1981 **Reasons by:** A.B. Weselak (in English; 4 pp.), concurred in by B.M. Suppa and G. Tisshaw **Docket no.:** 80-9138  
**Counsel:** Ms. M. Matsui, for the appellants; M. Bhabha, Esq., for the respondent.

---

30.7

Linford Lewis v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - NEPHEW AND NIECE WHO ARE ORPHANS - PERSONS HAVING NO LAWFUL FATHER AND DECEASED MOTHER - WHETHER ORPHANS WITHIN MEANING OF IMMIGRATION REGULATIONS, 1978 - THE STATUS OF CHILDREN ACT, 1976 (JAMAICA), SS. 3(1), 7, 9, 10 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(e)

The appellant sponsored the application for permanent residence in Canada made by his nephew and niece both of whom he alleges to be orphans. They are the son and daughter of the appellant's sister who is deceased. No father is shown on their birth registration forms and the testimony of the appellant is that his sister never married. The two children had different fathers, neither of whom lived with the children's mother in a common-law relationship. The respondent contended that the natural fathers of these children are alive and therefore the children cannot be considered as orphans.

**Held:** Appeal allowed in law. In the Immigration Regulations, 1978 "daughter" and "son" are defined so as to make provision for a child born outside of marriage. The definitions of "nephew" and "niece" specifically refer to a son or daughter born outside of marriage. The Board adopts an interpretation which is in harmony with the thrust and spirit of the Immigration Act, 1976 and Regulations and finds that where there is no legitimate, lawful father, orphan means a person whose mother is deceased.

Gill v. M.E.I. [1979] 2 F.C. 782, 102 D.L.R. (3d) 341 (C.A.).

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, March 10, 1981 **Judgment pronounced:** March 10, 1981 **Reasons by:** D. Davey (in English; 6 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 80-9380  
**Counsel:** S. Greenbaum, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

30.8

Pak Li v. Minister of Employment and Immigration

SPONSORSHIP - TWO SPONSORSHIP APPLICATIONS PENDING - WHETHER FIRST-MADE APPLICATION LAPSES OR REMAINS ALIVE UNTIL CANCELLED - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79(2) - IMMIGRATION REGULATIONS, PART I (revoked), SS. 2, 28(1), 31(1)(d)

The appellant sponsored the application for permanent residence made by his mother and her dependants. The sponsor had first applied in 1974 for his mother and two brothers, all living in the Peoples' Republic of China. It was not possible to process this application because of the situation in China at the time. A second application was made in 1979 for his mother and two new dependants. The respondent asked for clarification on the following points: (1) which application was being dealt with in the instant appeal; (2) for how long is the Commission bound by sponsorship applications never processed abroad due to impossible circumstances; (3) did a dependant listed on the first application remain sponsorable as a dependant if he no longer qualified at the time the second application was made.

**Held:** Appeal allowed in law. The refusal letter was based on the Immigration Act (repealed) although the Immigration Act, 1976 was then in force and accordingly the refusal is invalid.

In answer to the respondent's questions, there is no provision in the legislation for a sponsorship application to lapse. It seems to me that when a sponsorship application is made there is an obligation on the part of those being sponsored to make themselves available for interview abroad. If this is not done for whatever reason, it is reasonable for the Commission to so advise the sponsor and cancel the application. The Commission is bound by sponsorship applications until cancelled. In this case, the first application has not been cancelled. The second application is to be dealt with as an amendment to the first. The dependant listed on the first application continues to enjoy the benefits of eligibility under that application.

Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Glogowski, Houle, Tremblay, February 7, 1979 (See CLIC, No. 4.13, June 29, 1979).

<b>Coram:</b> C.M. Campbell (Vice-Chairman), U. Benedetti and B. Howard Vancouver, March 4, 1981	<b>Judgment pronounced:</b> April 1, 1981	<b>Case heard:</b>
C.M. Campbell (in English; 5 pp.), concurred in by U. Benedetti and B. Howard		<b>Reasons by:</b>
<b>no.:</b> 79-6276	<b>Counsel:</b> M. Prue, Esq., for the respondent.	<b>Docket</b>

---

30.9      Noé Aguilar Martinez v. Minister of Employment and Immigration  
Dora Alicia Aguilar Castaneda v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL ACTIVITIES AND MEMBERSHIP IN A SOCIAL GROUP - NO EVIDENCE OF PHYSICAL TORTURE OR DETENTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicants, husband and wife, citizens of El Salvador, claim to be refugees by reason of their political activities and membership in a social group. While in El Salvador, both participated in union activities and as a result were threatened by the authorities in power. They were forced to live clandestinely to escape notice. However, neither applicant was actually detained nor subjected to physical torture.

**Held:** Applications having been allowed to proceed, applicants are determined to be Convention refugees. Neither the Convention nor the Immigration Act, 1976 requires that a person be subjected to physical torture before he may be determined to be a Convention refugee. On the evidence, both applicants have proven a well-founded fear of persecution.

Jerez-Spring, Angel Eduardo v. The Immigration Appeal Board et al. (F.C.A., no. A-361-80), Pratte, Le Dain, Lalande, December 4, 1980 (not yet reported).

<b>Coram:</b> J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle Montreal, November 20, 1980	<b>Judgment pronounced:</b> November 20, 1980	<b>Case heard:</b>
J.-P. Houle (in French; 6 pp.), concurred in by R. Tremblay and G. Loiselle		<b>Reasons by:</b>
<b>no.:</b> 80-1145 and 70-1032	<b>Counsel:</b> G. Sciortino, Barrister and Solicitor, for the applicants; J.R. St-Louis, Esq., for the respondent.	<b>Docket</b>

---

**30.10 Eliana del Carmen Torres-Leal v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), (2), 70, 71(1)**

The applicant, a citizen of Chile, claimed to be a refugee by reason of her political opinions. She was named student director of a socialist group comprising students of the school she was attending and in that capacity was responsible for organizing groups to carry out social action programs instigated by the Allende government. In 1973, following the coup d'Etat, and again in 1974 she was detained, interrogated and physically abused. She was refused university admission because of her political tendencies. In 1976 she was detained, beaten and required to report to the authorities daily. She claims to have been followed constantly by men in civilian clothes and harassed by anonymous telephone callers. She joined a tour group that was planning a trip to Canada, seeing this as a means of leaving Chile undetected.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. Although some of the applicant's claims are excessive, we do accept that she suffered some measure of persecution. We believe that on the basis of her past experiences she has a reasonable fear of future eruptions of persecution.

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and U. Benedetti **Case heard:** Toronto, July 21, October 29, 1980, February 2 and 3, 1981 **Judgment pronounced:** February 4, 1981 **Reasons by:** E. Teitelbaum (in English; 3 pp.), concurred in by A.B. Weselak and U. Benedetti **Docket no.:** 80-9046 **Counsel:** Ms. G. Sadoway, Law Student, for the applicant; M. Prue, Esq., for the respondent.

---

**30.11 Hector Eduardo Contreras-Gutierrez v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION AND ACTIVITIES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70**

The applicant, a citizen of Chile, claimed to be a refugee by reason of his political opinion and activities. He became involved with the Socialist Party as a full-fledged member, involved in recruiting and electioneering for the Party. He was detained, interrogated and beaten on several occasions following the coup of September, 1973. He was fired from his job, left Chile and was granted refugee status in Argentina. He returned to Chile on learning that his file had been destroyed through the assistance of Party members. He found employment in Chile with a government transportation company, continued his political activities secretly and organized workers in a secret union within the company. About two years after obtaining that employment he was detained, tortured and fired from his job. Shortly thereafter he obtained a passport, arrived in Canada as a visitor and claimed to be a refugee at his inquiry.

**Held:** Application having been allowed to proceed, applicant is determined not to be a Convention refugee. In the period starting with his return from Argentina and the relinquishing of his Convention refugee status there, we have the picture of a person who had no trouble in obtaining employment in a country with a very severe unemployment problem. In fact, for over half that period, he was employed by a government transportation system. He did not have any problems with the authorities until he became the spokesman of an illegal union. There is little doubt that his detentions were the result of the massive security measures taken at the time of national holidays and if there was concern about his activities, such concerns flowed from his illegal union activities.

B. Howard (dissenting)

The applicant's arrests, interrogation, torture and loss of his job came about because of union activities but union activities that were part and parcel of the political environment. The activities of the applicant can be explained as those of a young man with a cause whose actions at times were both heroic and foolish. The Board has to decide, within the limits of the Immigration Act, 1976, whether the applicant has a well-founded fear of persecution for his political opinions. He has been persecuted in the past. If he returns to Chile, there is every reason to fear that the same will happen to him in the future. The applicant is a Convention refugee.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard (dissenting) **Case heard:** Vancouver, November 24, 1980 **Judgment pronounced:** March 16, 1981 **Reasons by:** W.M. Hlady (in English; 9 pp.), concurred in by C.M. Campbell **Dissenting reasons by:** B. Howard (in English; 9 pp.) **Docket no.:** 80-6220 **Counsel:** S. Guenther, Barrister and Solicitor, for the applicant; D.M. Hanbury, Esq., for the respondent.

---

**30.12      Luis Francisco Lobos Farias v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70**

The applicant, a citizen of Chile, claimed refugee status on the basis of his political activities. He was an active member of G.A.P., an organization supporting President Allende. From 1974 to 1978, the applicant operated from his tailor shop helping those whose lives had been threatened to escape from Chile. He was subjected to torture and detention and left Chile when he felt his life was in danger.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. The evidence establishes that the applicant was harassed by the authorities in power on account of his political activities. This harassment forced the applicant to live in hiding. He has proven the existence of a well-founded fear of persecution.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** Montreal, November 13, 1980 **Judgment pronounced:** December 4, 1980 **Reasons by:** J.-P. Houle (in French; 5 pp.), concurred in R. Tremblay and G. Loiselle **Docket no.:** 79-1191 **Counsel:** P. Weldon, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

**30.13      Aurora Fernandez Espejo v. Minister of Employment and Immigration**

**REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70**

The applicant, a citizen of Chile, claimed to be a refugee by reason of her political opinions. She helped in the campaign to elect Allende. She became a card-carrying member of the Socialist Party and became the secretary in the Party office located in her town. In this capacity she knew the identity of participants and the whereabouts of all the Party cells in her town. One supporter of the Socialist Party was a certain doctor who, following the coup d'Etat in September 1973, became the mayor of the town. The applicant attributed the fact that she was never detained and questioned to the doctor's protection, as she maintained that information she could give the authorities under duress would have discredited him. Following the coup d'Etat, the applicant was fired from her job allegedly for her socialist political opinions. She claims to have been blacklisted and therefore unable to find employment.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. The evidence before the Board shows clearly that fear dominated the applicant's life from the day the coup took place in 1973. The applicant's viva voce evidence made credible the situation she had faced in Chile and thus made plausible the actions she took while obsessed with the need to hide her earlier political associations. Through her involvement with the Socialist Party in her town she dealt with key information concerning the Party's organization. She was identified by the community and by the military as an activist. After being employed for a decade in a government institution, she was dismissed directly after the coup and when seeking alternative employment, was informed that she was listed as someone who could not be given a job. The evidence does show that the applicant misled the immigration authorities at various interviews and that she made her claim only at the final interview. It was only when her testimony made credible her fear as well-founded that her ongoing secrecy about her political associations could be understood.

C.M. Campbell (dissenting)

Despite her significant involvement in Socialist Party affairs, the applicant was not part of the round-up of Allende sympathizers immediately following the coup. She was never detained, never subjected to interrogation, never harassed and there has been no interference of any kind in the lives of her mother or sister in Chile either before or following her departure for Canada. From the day of the coup d'Etat forward she withdrew from political activity. Following her arrival in Canada, she was interviewed by immigration officers on at least seven occasions. Not only did she deny political involvement but she steadfastly maintained that she had come as a visitor and wished to remain on economic grounds. This is not the conduct to be expected of a person with a well-founded claim to refugee status.

Perez Gomez, Jose Del Rosario (I.A.B. 79-1179), Houle, Glogowski, Loisel, June 2, 1980.

**Coram:** C.M. Campbell (Vice-Chairman) (dissenting), G. Tisshaw and W.M. Hlady **Case heard:** Vancouver, September 24, 1980 **Judgment pronounced:** February 19, 1981  
**Reasons by:** G. Tisshaw (in English; 10 pp.), concurred in by W.M. Hlady **Dissenting reasons by:** C.M. Campbell (in English; 5 pp.) **Docket no.:** 80-6174 **Counsel:** J. Aldridge, Barrister and Solicitor, for the applicant; M. Prue, Esq., for the respondent.

---

30.14

Giovanni Frangipane v. Minister of Manpower and Immigration

**MOTION - MINISTER'S MOTION - ORAL REVIEW OF STAYED DEPORTATION ORDER - ALL THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, R.S.C. 1970, C. I-2 (repealed), S. 18(1)(d) - IMMIGRATION APPEAL BOARD ACT, R.S.C. 1970, C. I-3 (repealed), S. 15(3)**

The Minister moved to have a deportation order, which the Board had previously ordered stayed, executed or alternatively, to have the conditions of the stay varied. The respondent, now thirty-five years old, was landed in Canada at eighteen years of age and had a record of five convictions.

**Held:** Motion allowed, stay cancelled, deportation order directed to be executed as soon as reasonably practicable. After the original hearing, the Board granted a stay to allow the respondent time to show rehabilitation and adjustment. He has been given five years in which to show that he can effect some rehabilitation. All evidence is to the contrary if we look at the record of convictions, the failure to find employment, the lack of close relationships with his family and his failure to accept any responsibility for the care and support of his child.

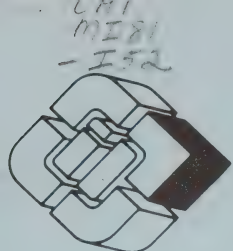
**Coram:** D. Davey (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, March 19, 1981 **Judgment pronounced:** March 19, 1981 **Reasons by:** D. Davey (in English; 5 pp.), concurred in by U. Benedetti and G. Tisshaw **Docket no.:** 75-10227  
**Counsel:** W.A. MacIntyre, Esq., for the applicant; E. Goldberg, Student-at-Law, for the respondent.

---



Lacking # 31





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 32

Date November 26, 1981

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall



**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

32.1	80-9480	Ali, Mohsin v. Minister of Employment and Immigration
32.2	80-9009	Needham, Royena Alphonso v. Minister of Employment and Immigration
32.3	81-6075	Lee, Harvey Sin Wai v. Minister of Employment and Immigration
32.4	80-6345	Gill, Malkit Singh v. Minister of Employment and Immigration
32.5	80-9438	Idrees, Mariam v. Minister of Employment and Immigration
32.6	80-1117	Topgyal, Nyingkho v. Minister of Employment and Immigration
32.7	79-9271	Dhamrait, Tara Singh v. Minister of Employment and Immigration
32.8	81-6037	Low, Donny v. Minister of Employment and Immigration
32.9	80-1187	Jean-Jacques, Soutien v. Minister of Employment and Immigration

#### REFUGEES

32.10	81-9243	Bhagwandi, Verasammy
32.11	79-1215	G., S. v. Minister of Employment and Immigration
32.12	81-9223	Lal, Kundan

#### REMOVAL ORDER

32.13	81-9078	Larocque, Llewellyn v. Minister of Employment and Immigration
-------	---------	---

#### JURISDICTION OF BOARD

32.1	80-9480	Ali, Mohsin v. Minister of Employment and Immigration
32.5	80-9438	Idrees, Mariam v. Minister of Employment and Immigration

#### EVIDENCE

32.7	79-9271	Dhamrait, Tara Singh v. Minister of Employment and Immigration
------	---------	--

32.1

Mohsin Ali v. Minister of Employment and Immigration

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS - SPONSOREE WITHIN FAMILY CLASS AT TIME SPONSORSHIP APPLICATION MADE - SUBSEQUENT MARRIAGE BY SPONSOR DISQUALIFYING SPONSOREE AS FAMILY CLASS MEMBER - BOARD TO CONSIDER FACTS EXISTING WHEN MATTER IS BEFORE IT IN DETERMINING WHETHER INDIVIDUAL WITHIN FAMILY CLASS**

**JURISDICTION OF BOARD - SPONSORSHIP - MEMBER OF THE FAMILY CLASS - BOARD TO CONSIDER FACTS EXISTING WHEN MATTER IS BEFORE IT IN DETERMINING WHETHER INDIVIDUAL WITHIN FAMILY CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 4(a), (h)**

The appellant sponsored the application for permanent residence made by his nephew. The application was refused on the ground that the documents submitted failed to establish the sponsoree's relationship to the sponsor and failed to establish his claim as a member of the family class. The nephew was being sponsored pursuant to section 4(h) of the Immigration Regulations, 1978. The sponsor filed an affidavit setting out facts that would make applicable section 4(h), one of the requirements being that he have no spouse who is a Canadian citizen, a permanent resident, or whose application for landing he may otherwise sponsor. Subsequent to filing this sponsorship application but while it was still pending, the sponsor married in Pakistan and sponsored his wife's application for admission to Canada.

**Held:** Appeal dismissed. The Board is to consider the facts as they exist when the matter is before it. The appellant has sponsored an application for landing made by his spouse. As the appellant has a spouse, the nephew is no longer a member of the family class described in section 4(h) of the Regulations. It is therefore not necessary for the Board to determine whether the testimony of the appellant and witnesses is sufficient to establish relationship.

Gana v. M.M.I. [1970] S.C.R. 699, 13 D.L.R. (3d) 699; Lew v. M.M.I. [1974] 2 F.C. 700, 52 D.L.R. (3d) 639 (C.A.).

**Coram:** D. Davey (Vice-Chairman), G. Tisshaw and B.M. Suppa **Case heard:** Toronto, July 20, 1981 **Judgment pronounced:** July 20, 1981 **Reasons by:** D. Davey (in English; 3 pp.), concurred in by G. Tisshaw and B.M. Suppa **Docket no.:** 80-9480  
**Counsel:** L. Perlis, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

32.2

Royena Alphonso Needham v. Minister of Employment and Immigration

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS - DEFINITION OF "DEPENDANT", "FAMILY", "MEMBER OF THE FAMILY CLASS" - WHETHER FINANCIAL DEPENDENCY A REQUIREMENT OF DEFINITIONS "DEPENDANT", "MEMBER OF THE FAMILY CLASS"**

**SPONSORSHIP - GROUNDS OF REFUSAL OF SPONSORSHIP APPLICATION - VALID REFUSAL IF ONE GROUND FOUND VALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(c), 6(1)(a)**

The appellant sponsored the applications for permanent residence of his mother and her dependants, being her daughter and her daughter's children. The mother's application was accepted and she was granted landing in Canada. The application made by her daughter, the sponsor's sister, was refused on the basis that she failed to provide documentation to establish her admission would not be contrary to the Immigration Act, 1976 or the Regulations and further, she was not a member of the family class since she was not dependent upon her mother for support as required by the definition of "family" in section 2(1) of the Immigration Act, 1976.

**Held:** Appeal dismissed. The Board finds that documentation has not been provided to establish that the appellant's sister is a dependant of a member of the family class.

As far as the second ground of refusal is concerned, the proper definition is not "family" but "member of the family class". There is no reference made to dependency in this latter definition. That an unmarried daughter under twenty-one is not financially dependent on her parent is not a proper ground of refusal. However, on the basis of the first ground of refusal, the refusal letter is valid in law. The three children of the appellant's sister, the grandchildren of the sponsor's mother, are not members of the family class for reasons set out in Johnson, Barbara Patricia v. M.E.I.

The respondent raised an additional argument against the admissibility of the appellant's sister as an accompanying dependant. Her mother came to Canada and was landed knowing her daughter's admission had been refused. The argument is that the sister, therefore, cannot be considered an accompanying dependant of her mother. However, having found the refusal valid for reasons set out above, the Board need not dispose of this argument at this time.

Coote, Marcelle v. M.E.I. (I.A.B. 79-1168), Houle, Tremblay, Loisel, June 11, 1980 (See CLIC, No. 23.2, February 26, 1981); Grant, Ethel v. M.E.I. (I.A.B. 79-9322), Weselak, Tisshaw, Suppa, October 21, 1980 (See CLIC, No. 25.4, April 20, 1981); Johnson, Barbara Patricia v. M.E.I. (I.A.B. 79-9378), Davey, Benedetti, Tisshaw, December 16, 1980 (See CLIC, No. 25.2, April 20, 1981).

Coram: D. Davey (Vice-Chairman), G. Tisshaw and B.M. Suppa Case heard: Toronto, June 30, 1981 Judgment pronounced: June 30, 1981 Reasons by: D. Davey (in English; 5 pp.), concurred in by G. Tisshaw and B.M. Suppa Docket no.: 80-9009  
Counsel: J.D. Taylor, Esq., for the respondent.

---

**32.3 Harvey Sin Wai Lee v. Minister of Employment and Immigration**

**SPONSORSHIP - REFUSAL BASED ON MEDICAL INADMISSIBILITY - SPONSOR DEMONSTRATED CAPACITY TO ASSUME OBLIGATIONS RESPECTING SPONSOREES - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79(2)(b)**

The appellant sponsored his parents' application for permanent residence. The refusal of the application was based on the medical inadmissibility of the sponsor's father. At the hearing, it became clear that his father had suffered a stroke and had since that time been confined to a wheelchair.

Held: Appeal allowed in equity. It is clear that the refusal is made in accordance with the Immigration Act, 1976 and Immigration Regulations, 1978. However, the Board was well impressed by the appellant's strong desire to have his parents in Canada and his willingness to care for them. He earns \$20,000 yearly, has a bank deposit of \$50,000 and is willing to deposit any amount as a guarantee that his father will not be an excessive drain on our resources. He informed the Board that since his father suffered a stroke seven years ago, he has never required hospitalization. There is no doubt that the sponsor and his brother will meet their obligations and that their parents will be financially looked after by them in case of need.

Coram: F. Glogowski (Vice-Chairman), U. Benedetti and W.M. Hlady Case heard: Winnipeg, May 13, 1981 Judgment pronounced: May 13, 1981 Reasons by: U. Benedetti (in English; 2 pp.), concurred in by F. Glogowski and W.M. Hlady Docket no.: 81-6075 Counsel: I. Munn, Esq., for the respondent.

---

**32.4 Maljit Singh Gill v. Minister of Employment and Immigration**

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS - SON - SPONSOR'S SONS BORN OUT OF WEDLOCK - SUBSEQUENT MARRIAGE BETWEEN SPONSOR AND SONS' MOTHER - WHETHER SONS POSSESS STATUS OF LEGITIMACY - LEGITIMACY ACT, R.S.B.C. 1979, C. 232, S. 1(1), (2) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, S. 2(1)(a)**

The appellant sponsored the application for permanent residence made by his two sons. The application was refused on the grounds that the sponsors had failed to provide satisfactory evidence to establish their relationship to the sponsor. Apparently the sponsor had lived with his sons' mother for fifteen years, but had not married her until after the birth of his sons. The respondent alleged that the sponsors were not sons within the definition set out in section 2(1) of the Immigration Regulations, 1978.

Held: Appeal allowed in law. There is no doubt that the sponsor is the father of the sponsorees. However, the question is whether the two boys, born out of marriage, are sons within the definition set out in section 2(1)(a) of the Regulations, namely "a male who is the issue of a marriage ... who would possess the status of legitimacy if his father had been domiciled in a province of Canada at the time of his birth". According to section 1 of the British Columbia Legitimacy Act, where a person's parents intermarry after his birth, he is legitimate from birth for all purposes of the law of the Province. Therefore, the boys are legitimate from birth for all purposes.

Coram: C.M. Campbell (Vice-Chairman), R. Tremblay and G. Loiselle Case heard: Vancouver, April 29, 1981 Judgment pronounced: April 29, 1981 Reasons by: G. Loiselle (in English; 6 pp.), concurred in by C.M. Campbell and R. Tremblay Docket no.: 80-6345 Counsel: D.P. Pandia, Esq., for the appellant; D.M. Hanbury, Esq., for the respondent.

---

32.5 Mariam Idrees v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION OF BOARD - TWO SPONSORSHIP APPLICATIONS MADE BY DISTINCT SPONSORS - APPEAL FROM PARTICULAR REFUSAL NOT MADE BY SPONSOR TO WHOM REFUSAL WAS DIRECTED - WHETHER BOARD SEIZED WITH VALIDLY INSTITUTED APPEAL

JURISDICTION OF BOARD - SPONSORSHIP - TWO SPONSORSHIP APPLICATIONS MADE BY DISTINCT SPONSORS - APPEAL FROM PARTICULAR REFUSAL NOT MADE BY SPONSOR TO WHOM REFUSAL WAS DIRECTED - WHETHER BOARD SEIZED WITH VALIDLY INSTITUTED APPEAL - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), (4), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2, 4(b), 6(1)(a) - IMMIGRATION APPEAL BOARD RULES, 1978, RULE 17

The appellant had sponsored her purported son's application for permanent residence in Canada. The application was refused on the grounds that the relationship between the sponsor and sponsoree had not been established. No appeal was filed from this refusal. About two years thereafter, the appellant's husband filed a similar application for the same sponsoree and this application was refused. The appellant filed an appeal from the last-mentioned refusal. The Board had to determine if it was seized with a validly instituted appeal.

Held: Appeal dismissed. Rule 17 of the Immigration Appeal Board Rules, 1978 requires an appeal to be served within thirty days after service on the sponsor of the notice of refusal of the application for landing. The appellant's appeal was accordingly out of time. The appellant's husband who sponsored the second application which was refused has not appealed. Nor was it proven that the appellant was acting as her husband's agent when she signed the notice of appeal. The Board has therefore determined that it does not have an appeal before it.

Germain v. M.M.I. [1979] 2 F.C. 784, 101 D.L.R. (3d) 384 (C.A.).

Coram: D. Davey (Vice-Chairman), G. Tisshaw and B.M. Suppa Case heard: Toronto, July 22, 1981 Judgment pronounced: July 30, 1981 Reasons by: D. Davey (in English; 4 pp.), concurred in by G. Tisshaw and B.M. Suppa Docket no.: 80-9438 Counsel: R.A. Sainaney, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

32.6 Ynyingkho Topgyal v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - FATHER - DAUGHTER - WHETHER ADOPTIVE FATHER SPONSORABLE AS MEMBER OF THE FAMILY CLASS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 2(1)

The appellant sponsored the application for permanent residence in Canada of her adoptive father, mother and their two children. The application was refused on the basis that the sponsor was not a "daughter" as defined in the Immigration Regulations, 1978 not having been adopted before she was thirteen years of age, and therefore her adoptive father was not a father and could not be sponsored as such.

**Held:** Appeal dismissed in law. The appellant's adoptive parents had raised her since she was eight years old after the death of her father and mother. On file is a copy of a certificate of judgment of a Quebec court authorizing the adoption, but the appellant was by this time twenty-eight years of age. There is no doubt that the appellant is the daughter of the sponsorees pursuant to the laws of the Province of Quebec and of Canada, but she does not come within the definition of "daughter" in the Regulations, not having been adopted before she attained thirteen years of age.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:** Montreal, March 20, 1981 **Judgment pronounced:** March 20, 1981 **Reasons by:** G. Loiselle (in English; 4 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 80-1117 **Counsel:** W.M. Weigel, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

**32.7      Tara Singh Dhamrait v. Minister of Employment and Immigration**

**SPONSORSHIP - TWO SPONSORSHIP APPLICATIONS PENDING - WHETHER FIRST-MADE APPLICATION REMAINS ALIVE UNTIL CANCELLED**

**EVIDENCE - SPONSORSHIP - PROOF OF RELATIONSHIP TO SPONSOR - BLOOD SAMPLES ESTABLISHING FAMILY RELATIONSHIP - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79**

The appellant sponsored the application of his father and dependants for admission to Canada as permanent residents. He had made his first sponsorship application in 1974 and a second one in 1978. The letter of refusal sent to the sponsor referred to the 1978 application and set out as a basis for refusal lack of satisfactory evidence to establish family relationship and failure to establish that two of the sponsored dependants were under twenty-one years of age. At the hearing, the respondent contended that the sponsor had abandoned his prior application in favour of the later one and the Board was seized with an appeal from the later application only.

**Held:** Appeal allowed in law. The relationship between the sponsor and sponsorees has been established. At the hearing, an immuno-haematologist concluded from blood tests performed by him that it was not possible to exclude familial relationship in this case. These blood tests corroborated other evidence adduced in respect of family relationship.

As was stated in Li, Pak v. M.E.I., there is no provision in the Act or Regulations for a sponsorship application to lapse. It remains alive until other action is taken. There is no evidence here that the earlier applications were abandoned by the sponsor and sponsorees nor that they were cancelled. The Board therefore accepts as valid the sponsor's 1974 application. At the time, his sister and brother were under twenty-one. At the time of the 1978 application, his brother and sister were still under twenty-one and dependants as defined in the Immigration Act, 1976 and Regulations.

Kuthiala, Ashok Kumar v. M.E.I. (I.A.B. 80-9303), Weselak, Teitelbaum, Suppa, April 8, 1981 (See CLIC, No. 30.3, September 28, 1981); Li, Pak v. M.E.I. (I.A.B. 79-6276), Campbell, Benedetti, Howard, April 1, 1981 (See CLIC, No. 30.8, September 28, 1981).

**Coram:** F. Glogowski (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** Toronto, October 14, December 16, 1980, April 22, 23, 1981 **Judgment pronounced:** July 6, 1981 **Reasons by:** F. Glogowski (in English; 8 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 79-9271 **Counsel:** L. Waldman, Barrister and Solicitor, C.C. Hoppe, Barrister and Solicitor, for the appellant; L. Williams, Esq., M. Prue, Esq., for the respondent.

---

32.8

Donny Low v. Minister of Employment and Immigration

SPONSORSHIP - SPONSOREE CONVICTED OF THEFT NOT EXCEEDING TWO HUNDRED DOLLARS PURSUANT TO CRIMINAL CODE - ELECTIVE OFFENCE - CROWN PROCEEDED BY INDICTMENT - WHETHER OFFENCE "MAY BE PUNISHABLE BY INDICTMENT" WITHIN SECTION 19(2)(a) OF IMMIGRATION ACT, 1976 - CRIMINAL CODE, R.S.C. 1970, C. 34, S. 294(b) - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(a), 79

The appellant sponsored his wife's application for landing in Canada. The application was refused on the basis of his wife's conviction for theft under two hundred dollars, an offence that may be punishable by way of indictment. The Crown had proceeded against the accused by indictment.

**Held:** Appeal allowed in equity. This case is distinguishable from *Kai Lee v. M.E.I.*, where the Crown had proceeded summarily against the accused on a charge of theft under two hundred dollars rather than by indictment. In *Lee*, it was held that the actual conviction was not for an offence that might be punishable by indictment. In the case before us, the certified copy of conviction indicates that the Crown proceeded by indictment. The refusal is therefore valid in law.

*Kai Lee v. M.E.I.* [1980] 1 F.C. 374, 102 D.L.R. (3d) 328 (C.A.).

**Coram:** D. Davey (Vice-Chairman), G. Tisshaw and W.M. Hlady **Case heard:** Edmonton, June 10, 1981 **Judgment pronounced:** June 10, 1981 **Reasons by:** D. Davey (in English; 4 pp.), concurred in by G. Tisshaw and W.M. Hlady **Docket no.:** 81-6037 **Counsel:** G. Advani, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

32.9

Soutien Jean-Jacques v. Minister of Employment and Immigration

SPONSORSHIP - DEPENDANT REFUSED ON MEDICAL GROUNDS - SPONSOR SHALL BE INFORMED OF REASONS FOR REFUSAL - NO DETAILS OF MEDICAL PROBLEM GIVING RISE TO INADMISSIBILITY - REFUSAL INVALID

SPONSORSHIP - REFUSAL BASED ON INVALID MEDICAL CERTIFICATE - REFUSAL THEREFORE INVALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(i), 79(1), (2)

The appellant sponsored the application for permanent residence made by his spouse and dependants. The application was refused on the basis that one of the dependants was medically inadmissible. The refusal letter addressed to the sponsor set out the wording of section 19(1)(a)(i) of the Immigration Act, 1976 but gave no details of the dependant's alleged illness.

**Held:** Appeal allowed in law. The refusal letter does not comply with section 79(1) of the Act, that the sponsor shall be informed of the reasons for refusal, because it is impossible to discover the nature of the dependant's illness and therefore to contest the Minister's allegations. However, this is not the only basis for allowing the appeal. The medical notification certificate was valid until May 13, 1980. The refusal letter is dated July 8, 1980. The refusal is therefore invalid, based as it is on an invalid medical certificate.

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** Montreal, May 20, 1981 **Judgment pronounced:** May 20, 1981 **Reasons by:** J.V. Scott (in French; 3 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 80-1187 **Counsel:** U. Lalanne, Barrister and Solicitor, for the appellant; J.R. St-Louis, Esq., for the respondent.

---

32.10

Verasammy Bhagwandi

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RACE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70

The applicant, a citizen of Guyana, claimed to be a Convention refugee by reason of his race. In his declaration under oath, he emphasized that the supporters of the People's National Congress, the present party in power, are predominantly black while the opposition party is supported by a majority of East Indian descendants. He claimed to have been threatened by negro employees at his place of work. He was also threatened by blacks in the street and alleges that these were black government supporters.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant does not claim to fear persecution by the government of his country. What he alleges to fear is the violence of blacks, whom he claims are government supporters, against Indians. The connection between blacks and government supporters is vague and seems to be based only on the fact that the government has the support of the majority of the blacks and the opposition, the support of the majority of the East Indians. There is no evidence that the government is seeking him out for persecution by virtue of race nor that he would be in any danger if he returned.

**Coram:** D. Davey (Vice-Chairman), G. Loiselle and B.M. Suppa **Case heard:** Toronto, June 18, 1981 **Judgment pronounced:** June 18, 1981 **Reasons by:** D. Davey (in English; 4 pp.), concurred in by G. Loiselle and B.M. Suppa **Docket no.:** 81-9243.

---

32.11

S.G. v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL ACTIVITIES OF HUSBAND - CREDIBILITY OF APPLICANT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of Chile, claimed to be a Convention refugee upon her arrival in Canada. She founded her claim principally on her husband's political activities. It was after her husband's departure from Chile that the applicant was subjected to harassment by the Chilean military. On two occasions they searched her home in an attempt to obtain information concerning her husband's activities and on a third, they took her away blindfolded, questioned and raped her. At her examination under oath, the applicant said nothing about her rape, disclosing it only at the redetermination stage before the Board.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. The applicant gave credible, plausible reasons for not having mentioned her rape at an earlier date. The Board has held that harassment of a wife in order to force her to divulge information concerning her husband's political activities may constitute persecution. In this case, the applicant was the victim of violent harassment including the most contemptible form of violence, rape.

Mingot v. M.M.I. 8 I.A.C. 351/368; Araya Heredio, Juan Alejandro v. M.M.I. (I.A.B. 76-1127), Houle, Legaré, Tremblay, January 6, 1977 (See CLIC, No. 1.11, March 20, 1979).

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay (dissenting) and G. Loiselle **Case heard:** Montreal, March 16, 1981 **Judgment pronounced:** March 19, 1981 **Reasons by:** J.-P. Houle (in French; 5 pp.), concurred in by G. Loiselle **Dissenting reasons by:** R. Tremblay (in French; 3 pp.) **Docket no.:** 79-1215 **Counsel:** D. Racicot, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

32.12

Kundan Lal

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - NO EVIDENCE OF WELL-FOUNDED FEAR - APPLICATION AN ABUSE OF PROCESS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of India, claims to be a refugee by reason of political opinion. Although he had never been active in politics, he claims to have been arrested by Congress Party members and held for three days along with his father and brother who both belonged to the Janta Party in India. He further claims that his brother was killed by Congress Party members and that his father and uncle were in jail in India, presumably as a result of political activities. He received a letter advising him of this while he was in London, England and states that consequently he is afraid to return to India.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The applicant left India to join a ship; the ship called at twelve countries, some of which are full signatories to the Geneva Convention but the applicant made no claim to refugee status at any of these ports of call. This is inconsistent with a claim to "well-founded fear", an element of the definition of "Convention refugee" in section 2(1) of the Immigration Act, 1976. A careful study of the examination under oath and the statutory declaration leaves no doubt that the applicant has concocted a story in order to claim Convention refugee status and circumvent normal immigration procedures. The claim and the application are frivolous and an abuse of process.

**Coram:** J.V. Scott (Chairman), F. Glogowski and W. Hlady **Case heard:** Toronto, June 4, 1981 **Judgment pronounced:** June 4, 1981 **Reasons by:** J.V. Scott (in English; 3 pp.), concurred in by F. Glogowski and W. Hlady **Docket no.:** 81-9223.

---

32-13 Llewellyn Larocque v. Minister of Employment and Immigration

REMOVAL ORDER - DEPORTATION ORDER - PERMANENT RESIDENT GRANTED LANDING SUBJECT TO TERMS AND CONDITIONS - KNOWINGLY CONTRAVENED CONDITION - ALL THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(b), 72(1)(a), (b), 75(1)(b)

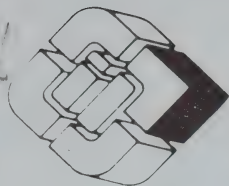
The appellant had been granted admission to Canada as a permanent resident subject to the condition that he marry his fiancée, who sponsored his application for permanent residence, within ninety days of his arrival in Canada. The marriage did not take place within the stipulated time, or at all, because the sponsor changed her mind. The appellant was accordingly ordered deported for having knowingly contravened the condition subject to which he had been granted landing. He appealed from the deportation order.

**Held:** Appeal dismissed. The Board finds that the deportation order is valid in law. Having regard to all the circumstances of the case, the Board notes that the appellant has no family in Canada and while he has worked at various jobs, in no way can it be argued that he has become established here. The Board finds no circumstances that would merit the granting of special relief.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, June 22, 1981 **Judgment pronounced:** June 22, 1981 **Reasons by:** D. Davey (in English; 3 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 81-9078  
**Counsel:** J. Elie, Esq., for the appellant; D. Taylor, Esq., for the respondent.

Lacking # 33-34



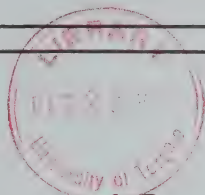


# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour B, 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 35

Date February 18, 1982



## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter. All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



### SPONSORSHIPS

35.1	80-6169	Chahal, Swaran Singh v. Minister of Employment and Immigration
35.2	80-9405	Hunjan, Gurmukh Singh v. Minister of Employment and Immigration
35.3	80-6430,	Khangura (Gill), Surinder Kaur v. Minister of Employment and
	80-6434	Immigration
35.4	80-9486	Persaud, Carmen Dhanpattie v. Minister of Employment and Immigration
35.5	78-6087	Sandhu, Surinder Kaur v. Minister of Employment and Immigration
35.6	80-6305	Singh, Pardhan v. Minister of Employment and Immigration
35.7	80-3028	Yavuz, Catherine v. Minister of Employment and Immigration

### REFUGEES

35.8	80-1083	Armijo Maripangue, Margarita Del Carmen v. Minister of Employment and
		Immigration
35.9	80-1081	Maripangue, Carlos Pascual Armijo v. Minister of Employment and
		Immigration
35.10	81-1117	Mudathir, Bakri Magzoub
35.11	80-6192	Quinteros-Hernandez, Leonel Eduardo v. Minister of Employment and
		Immigration

### REMOVAL ORDERS

35.12	81-3013	Matos, Manuel Da Cruz v. Minister of Employment and Immigration
35.13	80-6385	Villegas, Consolacion Reyes v. Minister of Employment and Immigration

### JURISDICTION OF BOARD

35.4	80-9486	Persaud, Carmen Dhanpattie v. Minister of Employment and Immigration
------	---------	--

### EVIDENCE

35.4	80-9486	Persaud, Carmen Dhanpattie v. Minister of Employment and Immigration
35.11	80-6192	Quinteros-Hernandez, Leonel Eduardo v. Minister of Employment and
		Immigration

### MOTION

35.5	78-6087	Sandhu, Surinder Kaur v. Minister of Employment and Immigration
------	---------	---

### PROCEDURE

35.6	80-6305	Singh, Pardhan v. Minister of Employment and Immigration
------	---------	--

35.1

Swaran Singh Chahal v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON UNTRUTHFUL STATEMENTS MADE TO VISA OFFICER - REFUSAL LETTER DID NOT SET OUT UNTRUTHS - RECORD RECEIVED BY APPELLANT SOME MONTHS PRIOR TO APPEAL HEARING CONTAINED DETAILS OF UNTRUTHS - WHETHER SPONSOR HAD BEEN PROPERLY INFORMED OF CASE TO BE MET - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 3(c), 19(2)(d), 59(1), 79(1)(a), (b), (2), (4) - IMMIGRATION REGULATIONS, 1978, S. 41(1)(a), (b) - IMMIGRATION APPEAL BOARD RULES, 1978 (revoked), R. 6(3)

The appellant sponsored the application for permanent residence made by his father, mother and brothers. The application was refused on the basis that the father had not answered truthfully questions put to him by a visa officer. At the hearing, counsel for the appellant submitted that the appeal should be allowed as the refusal letter did not set out the alleged untruthful statements.

**Held:** Appeal dismissed. At issue is the right of the appellant to know the case to be met. Section 41(1)(a) of the Immigration Regulations, 1978 requires that the details of the refusal of an application for landing are to be included in the letter of refusal. It is reasonable to conclude this was done to assure both that the appellant knew the case to be met from the beginning and that he knew the reasons for refusal when making his decision to appeal. However, in the instant case, the record was provided to the appellant eight months before the hearing. The record clearly sets out the reasons for the refusal. The deficiency in the refusal letter has been corrected in good time. To allow this appeal would acknowledge the power in the hands of a visa officer to delay the sponsorship process for an extended period simply by issuing a deficient refusal letter.

E. Teitelbaum (dissenting)

When a sponsor is deprived of knowing the reasons for refusal, as he was in this case, he is obliged to launch an appeal in order to learn why he has been refused. It is only by taking such action that he can get the record in which the reasons for refusal are contained. I would allow the appeal in law as the letter of refusal is not valid.

Rojas, Edith De v. M.M.I. (I.A.B. 76-1102), Scott, Houle, Legaré, November 8, 1976 (See CLIC, No. 1.5, March 20, 1979); Fortier-Pierre, Huguette v. M.E.I. (I.A.B. 78-1067), Glogowski, Houle, Tremblay, February 7, 1979 (See CLIC, No. 4.13, June 29, 1979); M.E.I. v. Bertrand, Maria Anna Clara (I.A.B. 77-7019), Campbell, Weselak, Benedetti, December 7, 1978 (See CLIC, No. 6.19, August 24, 1979); Skalski, Tadeusz v. M.E.I. (I.A.B. 79-9360), Glogowski, Benedetti, Teitelbaum, February 13, 1980 (See CLIC, No. 17.4, July 21, 1980); Dhillon, Antoinette v. M.E.I. (I.A.B. 80-1059), Glogowski, Tremblay, Loiselle, December 8, 1980; Choi, Josephine Lai-Kuen v. M.E.I. (I.A.B. 79-9213), Weselak, Benedetti, Davey, February 4, 1980 (See CLIC, No. 16.3, June 23, 1980); Charles, Edeline Bruno v. M.E.I. (I.A.B. 80-1098), Scott, Glogowski, Tremblay, February 20, 1981; Chong, Gloria v. M.E.I. (I.A.B. 80-1178), Teitelbaum, Houle, Tremblay, June 4, 1981; Crooks, Caswell Augustus v. M.E.I. (I.A.B. 80-9368), Davey, Suppa, Teitelbaum, June 25, 1981 (See CLIC, No. 33.3, December 21, 1981).

**Coram:** C.M. Campbell (Vice-Chairman), E. Teitelbaum and B. Howard **Case heard:** Vancouver, June 8, 9, 1981 **Judgment pronounced:** June 9, 1981 **Reasons by:** C.M. Campbell (in English; 6 pp.), concurred in by B. Howard **Dissenting reasons by:** E. Teitelbaum (in English; 3 pp.) **Docket no.:** 80-6169 **Counsel:** J.R. Taylor, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

35.2

Gurmukh Singh Hunjan v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON ALLEGATION THAT SPONSOREE HAD FAILED TO OBTAIN CONSENT OF MINISTER TO RETURN TO CANADA FOLLOWING DEPORTATION - IMMIGRATION MANUAL AUTHORIZING CONSENT TO BE GIVEN BY OFFICER IN CHARGE - WHETHER CONSENT MUST ALSO BE REFUSED BY OFFICER IN CHARGE - NO EVIDENCE OF REFUSAL OF CONSENT BY OFFICER IN CHARGE - WHETHER REFUSAL INVALID AS A RESULT - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 57, 79

The appellant sponsored his father's application for landing which included the appellant's brother as a dependant. The application was refused on the grounds that the brother had been ordered deported from Canada in 1977 and had failed to obtain the Minister's consent to return under section 57 of the Act. Counsel for the appellant argued that the refusal letter was not in accordance with the law in that it referred to a denial of the Minister's consent and this denial was never made by the appropriate Canadian immigration authority. He referred to an excerpt from the Immigration Manual, wherein the Minister authorized officers in charge of visa offices outside Canada to consent to the return to Canada of persons deported. He suggested that the only person who could refuse a consent would be that same officer in charge of a visa office outside Canada.

**Held:** Appeal dismissed in law and equity. The Immigration Manual deals with internal administration and has no force in law. Section 57 of the Act deals only with the granting of consent. If consent is not granted - and this fact was never contested in the instant appeal - that is the end of the matter. I cannot accept the argument of the appellant's counsel that the Minister has a statutory duty either to give consent or deny it "lawfully". I cannot find in section 57 any suggestion that the Minister has any obligation to do anything, unless he intends to give consent. Since no consent was granted in this case, the refusal is in accordance with the law.

**Coram:** J.V. Scott (Chairman), U. Benedetti and B.M. Suppa **Case heard:** Toronto, September 23, 1981 **Judgment pronounced:** September 23, 1981 **Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by U. Benedetti and B.M. Suppa **Docket no.:** 80-9405 **Counsel:** M. Green, Q.C., for the appellant; J.D. Taylor, Esq., for the respondent.

---

### 35.3 Surinder Kaur Khangura (Gill) v. Minister of Employment and Immigration

**SPONSORSHIP - REFUSAL BASED ON FACT THAT SPONSOREE HAD FAILED TO RESPOND TO COMMUNICATION OF IMMIGRATION OFFICE WITHIN TIME STIPULATED - SPONSOREE HAD IN FACT REPLIED WITHIN TIME STIPULATED BUT LETTER NOT RECEIVED BY IMMIGRATION OFFICE UNTIL AFTER PERIOD HAD ELAPSED - SPONSOREE NOT TREATED FAIRLY IN THE CIRCUMSTANCES - WHETHER REFUSAL VALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79**

The appellant sponsored the application for permanent residence made by her mother and brother. The application was refused on the grounds that satisfactory evidence had not been produced to establish that the brother was under twenty-one years of age. The mother was requested to inform the immigration office handling the application within two months of the date of the refusal letter to advise whether she wished to pursue her application on the basis that her son would not accompany her to Canada. The letter also informed her that her application would be cancelled if the immigration office did not hear from her within the stipulated time. The application was subsequently cancelled as the mother had allegedly failed to respond within the stipulated time, and had thus failed to comply with sections 9(3) and 19(2)(d) of the Immigration Act, 1976. The mother had, in fact, replied within the two-month period but her letter was not received until three days after the period had elapsed.

**Held:** Appeal allowed in law and equity. An authenticated birth certificate and matriculation examination certificate establish that the brother was under twenty-one when his application for permanent residence was filed with the immigration officials in New Delhi, India. With respect to the refusal of the mother, it is the view of the Board, after reading the exchange of letters between the sponsoree and the Commission and looking carefully at the chronology of the communications, that the mother was not treated with fairness in the processing of her application for permanent residence. Within the prescribed period she did reply and asked that her application be kept pending. It is accepted by the Board that undue delay in complying with the request of a visa officer, particularly in the absence of any indication of good faith on the part of the applicant, can be cause for the cancelling of an application. These elements do not pertain to the instant case, and based on the facts before it, the Board finds that the refusal is not valid in law.

Kang v. M.E.I. (1981) 37 N.R. (Fed.C.A.).

**Coram:** D. Davey (Vice-Chairman), G. Tisshaw and W.M. Hlady **Case heard:** Toronto, June 10, 1981 **Judgment pronounced:** June 10, 1981 **Reasons by:** G. Tisshaw (in English; 8 pp.), concurred in by D. Davey and W.M. Hlady **Docket no.:** 80-6430, 80-6434 **Counsel:** G. Draper, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

35.4 Carmen Dhanpattie Persaud v. Minister of Employment and Immigration

SPONSORSHIP - JURISDICTION OF BOARD - SPONSORSHIP APPLICATION MADE IN RESPECT OF SPONSOR'S FIANCÉ - SPONSOR MARRIED FIANCÉ PRIOR TO DATE OF APPEAL - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL

JURISDICTION OF BOARD - SPONSORSHIP - SPONSORSHIP APPLICATION MADE IN RESPECT OF SPONSOR'S FIANCÉ - SPONSOR MARRIED FIANCÉ PRIOR TO DATE OF APPEAL - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL

EVIDENCE - SPONSORSHIP - PROOF OF FOREIGN MARRIAGE - DOCUMENTS EVIDENCING MARRIAGE BY PROXY - WHETHER ACCEPTABLE AS PROOF OF VALID MARRIAGE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(b)(iii)

The appellant sponsored her fiancé's application for permanent residence in Canada. The application was refused because the sponsor, in the opinion of an immigration officer, would not be able to fulfill an undertaking given by her to provide for lodging, care and maintenance of her fiancé as required by section 6(1)(b)(iii) of the Immigration Regulations, 1978. At the hearing of the appeal, the appellant filed an original and a true copy and translation of a marriage deed which evidenced her marriage, by proxy, to the sponsoree on March 18, 1981. A preliminary question arose as to the jurisdiction of the Board to entertain the appeal.

**Held:** Appeal dismissed for want of jurisdiction. Having examined the exhibits filed in support of the marriage, the Board finds that they appear to be valid on their face and contain the seal of, and have been signed by, the "Nikah Registry." The Board is prepared to accept that the appellant was married by proxy to her fiancé on March 18, 1981. In Cuppige, Constance v. M.M.I., and in Mignott, Aneita Clementina v. M.E.I., the Board held that, as the appellant had married between the date of her application to sponsor her fiancé for permanent residence and the date of the appeal, it had no jurisdiction to hear the appeal as the refusal was based upon the ground that the sponsoree was a fiancé and the considerations relating to the refusal were of a different nature with respect to a fiancé than with respect to a husband. The Board, following its previous decisions, dismisses this appeal for want of jurisdiction.

Cuppige, Constance v. M.M.I. (I.A.B. 76-9270), Weselak, Benedetti, Petrie, September 28, 1976; Mignott, Aneita Clementina v. M.E.I. (I.A.B. 79-9220), Weselak, Benedetti, Teitelbaum, October 17, 1979 (See CLIC, No. 10.10, December 27, 1979).

**Coram:** A.B. Weselak (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, April 7, June 29, 1981 **Judgment pronounced:** June 29, 1981 **Reasons by:** A.B. Weselak (in English; 2 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 80-9486 **Counsel:** N. Goodman and B. Knazan, Barristers and Solicitors, for the appellant; M. Prue, Esq., and M. Bhabha, Esq., for the respondent.

---

35.5 Surinder Kaur Sandhu v. Minister of Employment and Immigration

**SPONSORSHIP - MOTION - MOTION TO REOPEN APPEAL - WHETHER MOTION SHOULD BE GRANTED IN THE CIRCUMSTANCES**

**MOTION - SPONSORSHIP - MOTION TO REOPEN APPEAL - WHETHER MOTION SHOULD BE GRANTED IN THE CIRCUMSTANCES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 79, 84**

The applicant brought this motion to have her appeal reopened in order that she might adduce evidence not presented before, in support of her case. In 1976, she had filed an application to sponsor for admission to Canada as permanent residents, her mother and the person she alleged was her adopted brother. The application was refused on the grounds that the adoptive relationship had not been established. The appeal from this refusal was heard by the Board in 1979 and dismissed. The appellant brought a motion for reopening the appeal in 1980, so the Board might consider a document represented as a deed of adoption. The motion was allowed, and the appeal reheard and dismissed.

**Held:** Motion dismissed. Section 84 of the Immigration Act, 1976 provides a right of appeal from a decision of the Board to the Federal Court of Appeal on any question of law, with leave of that Court. Not being satisfied with the Board's decision respecting her appeal, it is open to the applicant to take her case to the Federal Court: this is the procedure provided.

**Coram:** C.M. Campbell (Vice-Chairman), U. Benedetti and B. Howard **Case heard:** Vancouver, September 17, 1981 **Judgment pronounced:** September 17, 1981 **Reasons**  
**by:** C.M. Campbell (in English; 2 pp.), concurred in by U. Benedetti and B. Howard  
**Docket no.:** 78-6087 **Counsel:** K.S. Sandhu, Esq., for the applicant; C.J. Dickey, Esq., for the respondent.

---

35.6 Pardhan Singh v. Minister of Employment and Immigration

**SPONSORSHIP - PROCEDURE - REQUEST FOR ADJOURNMENT OF APPEAL HEARING - GROUNDS NOT MADE OUT FOR GRANTING REQUEST - APPELLANT GIVEN OPPORTUNITY OF ANSWERING ALLEGATIONS MADE AGAINST HIM**

**PROCEDURE - SPONSORSHIP - REQUEST FOR ADJOURNMENT OF APPEAL HEARING - GROUNDS NOT MADE OUT FOR GRANTING REQUEST - APPELLANT GIVEN OPPORTUNITY OF ANSWERING ALLEGATIONS MADE AGAINST HIM - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79**

The appellant sponsored the applications of his parents and brothers for admission to Canada as permanent residents. The appellant failed to appear at his appeal from the refusal of the application. However, he was represented at the hearing, not by the actual solicitor of record, but by another solicitor from the same firm. At the outset of the hearing, counsel for the appellant requested an adjournment but the respondent objected, in the absence of proof that one of the proposed immigrants had left Canada. The basis for the request was certain documents required by the appellant had not yet arrived from India.

**Held:** Adjournment refused, appeal dismissed. Counsel for the appellant produced no evidence that the proposed immigrant in question had left Canada and was unable to tell the Board what documents were required or when they had been requested. A request for an adjournment requires more substantial support than this. The date of the hearing was known ten weeks in advance. The appellant has had every opportunity of answering what was alleged in the refusal of his sponsorship application. The Board considers his apparent indifference to these court proceedings to be a contempt of this court.

Pierre v. M.M.I. [1978] 2 F.C. 849 (C.A.).

Coram: C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard Case heard:  
Vancouver, September 8, 1981 Judgment pronounced: September 8, 1981 Reasons by:  
C.M. Campbell (in English; 9 pp.), concurred in by W.M. Hlady and B. Howard Docket  
no.: 80-6305 Counsel: F.R. Whiteside, J.R. Taylor, Barristers and Solicitors, for  
the appellant; I.D. Munn, Esq., for the respondent.

---

35.7 Catherine Yavuz v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - HUSBAND - COMPASSIONATE OR HUMANITARIAN  
CONSIDERATIONS - ON THE EVIDENCE, MARRIAGE A SHAM - NO GROUNDS MADE OUT FOR RELIEF IN  
EQUITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), 57, 79

The appellant sponsored her husband's application for permanent residence. The application was refused on the grounds that the sponsoree was required to obtain the consent of the Minister pursuant to section 57 of the Immigration Act, 1976 and was seeking to come into Canada without having obtained such consent. The sponsoree came to Canada as a visitor in 1977, was ordered deported about three months following his arrival, married the appellant nine days after the deportation order was made and voluntarily departed from Canada a few days later.

Held: Appeal dismissed in law and equity. Since her husband's departure, the appellant has had no direct communication with him. On the evidence, the marriage is a sham, entered into by the sponsoree in an effort to stay in Canada. While she may have been more a victim of than a willing participant in this scheme, the appellant knew that her husband had been ordered deported before she married him; she did not sponsor his application for landing until almost two and one half years after the marriage, and the marital relationship barely exists.

Coram: J.V. Scott (Chairman), F. Glogowski and R. Tremblay Case heard: Ottawa,  
September 15, 1981 Judgment pronounced: September 15, 1981 Reasons by: J.V.  
Scott (in English, 4 pp.), concurred in by F. Glogowski and R. Tremblay Docket no.:  
80-3028 Counsel: P. Dioguardi, Barrister and Solicitor, for the appellant; W.L.  
Bernhardt, Esq., for the respondent.

---

35.8 Margarita Del Carmen Armijo Maripangue v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION AND  
ACTIVITIES - WHETHER APPLICANT INTENTIONALLY CREATED FEAR BY PARTICIPATING IN  
ANTI-GOVERNMENT DEMONSTRATIONS - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C.  
52, SS. 2(1), 70

The applicant, a citizen of Chile, claimed to be a refugee by reason of her political opinion and activities. In April, 1978 she became a member of a group of socialists, was arrested, detained and physically maltreated. She nevertheless continued to take part in demonstrations after her release and was arrested a second time as a result of these activities. After a priest obtained the documents necessary for her departure from Chile, she left the country and claimed refugee status on her arrival in Canada.

Held: Application having been allowed to proceed, applicant is determined to be a Convention refugee. The applicant has demonstrated a well-founded fear of persecution should she be required to return to Chile, having been subjected to harassment by the ruling authorities there.

R. Tremblay (dissenting)

The applicant made several contradictory statements, thereby putting her credibility in doubt. It is possible that she participated in a demonstration against the Pinochet régime. However, in my opinion, it is not within the spirit of the Geneva Convention to determine as refugees those who provoke the ruling authorities by taking part in anti-government demonstrations that threaten public order. It would otherwise be simple for someone who wished to become an immigrant to use such a scheme, whatever his political opinions, in order to have himself declared a refugee. Fear is a subjective element that must be supported by an objective element as well. When one intentionally creates the element of fear, as the applicant has done, is one really afraid? Those who do not keep the peace are subject to arrest even in democratic countries. The applicant is not credible. I would determine her not to be a Convention refugee.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
Montreal, June 25, 1981 **Judgment pronounced:** September 9, 1981 **Reasons by:**  
J.-P. Houle (in French; 4 pp.), concurred in by G. Loiselle **Dissenting reasons by:**  
R. Tremblay (in French; 3 pp.) **Docket no.:** 80-1083 **Counsel:** J.D. Gibara,  
Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

35.9 Carlos Pascual Armijo Maripangue v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION AND ACTIVITIES - WHETHER APPLICANT MERELY ECONOMIC REFUGEE - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of Chile, claimed to be a Convention refugee by reason of his political opinions and activities. He was a member of the Socialist Party and was arrested on September 30, 1973 and detained until October, 1974. During detention he was physically maltreated and interrogated. He was arrested again in September, 1975 and freed subject to certain conditions. He deserted a Greek ship and claimed refugee status upon arrival in Canada.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. Clearly, the applicant was harassed by the ruling authorities because of his political activities.

R. Tremblay (dissenting)

From October, 1974 to September, 1975, the applicant was not bothered by the authorities. From 1975 to 1977, he was neither arrested nor detained. He decided to leave the country because he was afraid he would not be able to find work. He went to several countries, including the United States, without claiming refugee status upon arrival. His story is not plausible; neither is he a credible witness. He is an economic refugee who waited for the opportunity to desert a ship bound for Canada. He is not a Convention refugee.

**Coram:** J.-P. Houle (Vice-Chairman), R. Tremblay and G. Loiselle **Case heard:**  
Montreal, June 25, 1981 **Judgment pronounced:** September 9, 1981 **Reasons by:**  
J.-P. Houle (in French; 4 pp.), concurred in by G. Loiselle **Dissenting reasons by:**  
R. Tremblay (in French; 4 pp.) **Docket no.:** 80-1081 **Counsel:** J.D. Gibara,  
Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

35.10

Bakri Magzoub Mudathir

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINIONS - DELAY IN MAKING CLAIM TO REFUGEE STATUS - CREDIBILITY AFFECTED AS A RESULT OF DELAY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), 70

The applicant, a citizen of Sudan, was admitted to Canada on a visitor's visa for a three-week period. He overstayed the period specified in the visa and was subjected to inquiry as a result. At the inquiry, he claimed to be a Convention refugee on account of his political opinions.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. In the transcript of the examination under oath, the applicant describes his arrests and detentions in 1975, 1976 and 1978, and his escape from prison in 1978. However, his evidence indicates that at the same time, being an "escapee" from prison, he was able to pursue his studies at the state university. The applicant's parents, brothers and sisters are living in Sudan and apparently have no problems with the authorities. The Board further notes that the applicant had no trouble leaving Sudan to travel to England. He was in England on two occasions in 1979, for one month and then for approximately five weeks, yet he did not claim refugee status there. While it may be true that a refugee claimant need not claim refuge in the first country he comes to, when he leaves the country which, in his opinion, is persecuting him, he should act in respect of his fear without unreasonable delay. Failure to do so goes to the root of his credibility in respect of well-founded fear. The applicant spent significant periods of time in the United Kingdom without making a claim to be a Convention refugee. It was not until his visa expired in Canada that he claimed to be a refugee. In the Board's opinion, this destroys his credibility.

**Coram:** F. Glogowski (Vice-Chairman), G. Tisshaw and B.M. Suppa **Judgment pronounced:** August 19, 1981 **Reasons by:** F. Glogowski (in English; 6 pp.), concurred in by G. Tisshaw and B.M. Suppa **Docket no.:** 81-1117.

---

35.11 Leonel Eduardo Quinteros-Hernandez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - CREDIBILITY - APPLICANT LACKING "WELL-FOUNDED FEAR"

EVIDENCE - REFUGEE - REDETERMINATION - BOARD INVESTIGATING HISTORICAL FACT OF ITS OWN MOTION TO CLARIFY DISCREPANCY IN APPLICANT'S EVIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of El Salvador, claimed to be a Convention refugee by reason of his political opinions and activities, in particular, his participation in a student organization of the Popular Front of Liberation. As a member of that organization, he was involved in public demonstrations and meetings. He did not, however, play a leadership role in the organization. He also claimed to have been one of a small group who took food to the staff held hostage in the Venezuelan Embassy in San Salvador when the Embassy was taken over by revolutionaries in March, 1979.

**Held:** Application having been allowed to proceed, applicant is determined not to be a Convention refugee. It is clear from the record that the applicant freely admitted that he lied on numerous occasions in order to be admitted to Canada. There are numerous discrepancies in his evidence. The Board does not usually investigate the evidence adduced at its hearings; however, due to the discrepancy in dates given by the applicant himself to the historical fact widely reported by the media the world over, namely the seizure of the Venezuelan Embassy in San Salvador in 1979, the Board took upon itself to check which date given by the applicant was correct. A single telephone call to the public library sufficed to obtain the information that the seizure of the Embassy took place on May 11, 1979 and that it lasted eleven days. The applicant's claim, therefore, that his involvement in this incident put his life in jeopardy appears to be a pure

invention. As his credibility is nil, the Board cannot believe his other story of involvement in the activities of the Popular Front of Liberation. Therefore, the Board finds that the applicant failed to convince the Board that he has a "well-founded fear" of persecution.

**Coram:** F. Glogowski (Vice-Chairman), G. Tisshaw and B. Howard **Case heard:** Vancouver, May 28, 1981 **Judgment pronounced:** August 18, 1981 **Reasons by:** F. Glogowski (in English; 16 pp.), concurred in by G. Tisshaw and B. Howard **Docket no.:** 80-6192 **Counsel:** J.S. Olsen, Barrister and Solicitor, for the applicant; I.D. Munn, Esq., for the respondent.

---

35.12 Manuel Da Cruz Matos v. Minister of Employment and Immigration

REMOVAL ORDER - EXCLUSION ORDER - APPELLANT HAD BEEN LANDED IN CANADA IN 1974 - SUBSEQUENT DEPARTURE TO COUNTRY OF CITIZENSHIP AND RETURN TO CANADA - WHETHER APPELLANT INTENDED TO ABANDON CANADA AS HIS PLACE OF PERMANENT RESIDENCE - WHETHER A RETURNING RESIDENT - CREDIBILITY - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), 12(4), 19(2)(d), 24, 32(5)(b), 72

The appellant, citizen of Portugal, was ordered excluded from Canada on the grounds that he had failed to obtain an immigrant visa before appearing at a port of entry and that he had failed to answer truthfully questions put to him by an immigration officer. He had first come to Canada in 1969 as a visitor and was ordered deported in 1972. The Board allowed his appeal from the deportation order and he was landed in 1974. His family remained in Portugal. In 1976, he went to Portugal after hearing that his sons were ill and remained there for about a year. He returned to Canada in 1977 and apparently was admitted as a returning resident. In 1978, he went back to Portugal and returned to Canada in 1981, seeking admission as a visitor and was ordered excluded.

**Held:** Appeal dismissed. This case turns on the question of whether the appellant was a returning resident when he came to Canada in 1981. In cases where the problem has been resolved in favour of the alleged returning resident, credibility is a prime factor. The person concerned must establish his intention - the *animus revertendi* - and since intention is subjective, the Board must be satisfied of his credibility. In the instant appeal, the Board is far from satisfied as to credibility. The appellant swore that he always intended to bring his family to Canada. However, when he was in Portugal he or his wife bought a truck for work in construction; he also owns a house there and brought his car from Canada. He has three passports. The one on which he came to Canada in 1981 was a tourist passport. He stated at his inquiry that when he went to have his immigrant passport renewed, he required a guarantor and his guarantor refused to sign. He crossed into Spain on several occasions and required the Portuguese officials to stamp his passport because he was told it would be easier to come to Canada if he had stamps in his passport. His lies under oath, his antics with his passport, his manifest evasiveness and the fact that all his assets are in Portugal - he has none in Canada - lead irresistibly to the conclusion that he never intended to remain in or return to Canada as a permanent resident: clearly his only aim in acquiring landed immigrant status was to facilitate voyages to Canada for temporary employment purposes.

Webber, Kenneth Jimmy v. M.E.I. (I.A.B. 78-9125), Weselak, Benedetti, Teitelbaum, June 14, 1978 (See CLIC, No. 2.3, April 25, 1979); Selby, Brendan Leeson v. M.E.I. (I.A.B. 79-6047), Campbell, Glogowski, Teitelbaum, May 24, 1979 (See CLIC, No. 16.14, June 23, 1980); Hass, Manfred v. M.E.I. (I.A.B. 79-6130), Scott, Campbell, Teitelbaum, February 6, 1980 (See CLIC, No. 17.11, July 21, 1980).

**Coram:** J.V. Scott (Chairman), F. Glogowski and R. Tremblay **Case heard:** Ottawa, September 16, 1981 **Judgment pronounced:** September 18, 1981 **Reasons by:** J.V. Scott (in English; 7 pp.), concurred in by F. Glogowski and R. Tremblay **Docket no.:** 81-3013 **Counsel:** K.E. Barnard, Barrister and Solicitor, for the appellant; W.L. Bernhardt, Esq., for the respondent.

---

35.13

Consolacion Reyes Villegas v. Minister of Employment and Immigration

REMOVAL ORDER - DEPORTATION ORDER - PERMANENT RESIDENT - APPELLANT GRANTED LANDING BY REASON OF MISREPRESENTATION OF MATERIAL FACT - ALL THE CIRCUMSTANCES OF THE CASE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 27(1)(e), 32(2), 72(1)(b)

The appellant, a permanent resident, was ordered deported on the basis that she had been granted landing by reason of misrepresentation of a material fact made by herself. At the outset of the appeal hearing, counsel for the appellant conceded that the deportation order was valid in law but sought to adduce evidence going to the Board's equitable jurisdiction under section 72(1)(b) of the Immigration Act, 1976. The appellant first applied for landing in Canada in 1972 but although her application was approved, she did not pursue it but remained in the Philippines to look after her mother who had become ill. The appellant then married and had a son but the family were unable to meet their financial obligations. The appellant re-applied for immigration to Canada concealing her marriage and the fact that she had a son. Upon arrival in Canada in 1979, she obtained employment and remitted amounts regularly to her family. As a result of these substantial remittances, she did not accumulate any assets other than \$1,000 in the bank. Within a few weeks of her arrival in Canada she reported to Immigration authorities the fact that she had misrepresented her marital status and the instant deportation order resulted.

Held: Appeal allowed in equity. The Board does not condone the action of an immigrant who seeks entry into Canada by untruthful statements. However, the appellant, while still single, sacrificed her right to enter Canada legally in 1972 when, as a duty to her family, she remained behind to help out during a time of family crisis. Since then all her efforts seem to have been to alleviate her family's struggle against poverty. Allowing the appeal will permit an industrious young woman to continue to contribute to Canadian society and to the survival of her family.

W.M. Hlady (dissenting)

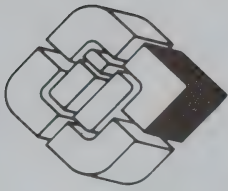
The thrust of the appellant's testimony was to paint a picture of desperation, unemployment, poverty and illness for her family in the Philippines. Yet, under cross-examination, the unemployment, the poverty and the desperation did not stand up to the original presentation. The process of obtaining permanent residence through misrepresentation cannot be tolerated if our immigration laws are to be administered in the manner in which Parliament envisioned. I would dismiss the appeal.

Coram: F. Glogowski (Vice-Chairman), B. Howard and W.M. Hlady Case heard: Winnipeg, July 20, 1981 Judgment pronounced: July 22, 1981 Reasons by: B. Howard (in English; 3 pp.), concurred in by F. Glogowski Dissenting reasons by: W.M. Hlady (in English; 3 pp.) Docket no.: 80-6385 Counsel: C.W. Lorenc, Barrister and Solicitor, for the appellant; I.D. Munn, Esq., for the respondent.

---

ISSN 0225-1620

PM



# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

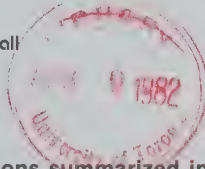
No. 36

Date March 26, 1982

CAI  
ME 81  
- 152

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall



**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

36.1	80-6348	Abela, Hilda v. Minister of Employment and Immigration
36.2	80-9333	Brown, Stephonie Rosemarie v. Minister of Employment and Immigration
36.3	80-1150	Chahil, Kamjit Grewal v. Minister of Employment and Immigration
36.4	81-1071	Pierre, Erla v. Minister of Employment and Immigration
36.5	81-9002	Sethi, Rabindra v. Minister of Employment and Immigration
36.6	81-1035	Singh, Marie Georgiana v. Minister of Employment and Immigration
36.7	80-9234	Soordhar, Nihal S. v. Minister of Employment and Immigration
36.8	81-1010	Syed, Zillay Hasan v. Minister of Employment and Immigration
36.9	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration

#### REFUGEES

36.10	81-6325	Hubicki, Slawomir Krzysztof
36.11	80-1118	Parraguez, Jose Rafael v. Minister of Employment and Immigration
	80-1119	Parraguez, Maria Arce Olguin v. Minister of Employment and Immigration
36.12	80-1064	Vergara, Guillermo Tello Silva v. Minister of Employment and Immigration

#### REMOVAL ORDER

36.13	81-6082	Buffum, Miriama Baygum v. Minister of Employment and Immigration
-------	---------	--

#### DEPORTATION ORDER

36.14	81-9449	Tannis, Joyce Cornelia v. Minister of Employment and Immigration
-------	---------	--

#### EVIDENCE

36.3	80-1150	Chahil, Kamjit Grewal v. Minister of Employment and Immigration
36.8	81-1010	Syed, Zillay Hasan v. Minister of Employment and Immigration

#### PROCEDURE

36.7	80-9234	Soordhar, Nihal S. v. Minister of Employment and Immigration
36.11	80-1118	Parraguez, Jose Rafael v. Minister of Employment and Immigration
	80-1119	Parraguez, Maria Arce Olguin v. Minister of Employment and Immigration

#### MOTION

36.9	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration
36.14	81-9449	Tannis, Joyce Cornelia v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

36.9	80-9437	Tsang, Mei-Chun v. Minister of Employment and Immigration
36.13	81-6082	Buffum, Miriama Baygum v. Minister of Employment and Immigration

36.1

Hilda Abela v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - ADMISSION OF DEPENDANT WOULD CAUSE OR MIGHT REASONABLY BE EXPECTED TO CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - EVIDENCE THAT SPONSOR PREPARED TO MEET COSTS OF MEDICAL CARE OF DEPENDANT - WHETHER ADMISSION OF DEPENDANT WOULD THEREFORE CAUSE EXCESSIVE DEMANDS ON HEALTH SERVICES - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(ii), 79(2)(a), (b)

The appellant sponsored the application for permanent residence in Canada made by her father and his accompanying dependants. The application was refused on account of the medical inadmissibility of one of the dependants, in that he was suffering from a serious heart disease. The appellant and her husband concluded, based on medical advice, that it would be in the best interests of the dependant to come to Canada and receive medical attention here. They were advised by their Canadian doctor it would cost \$13,000 and are prepared to make this expenditure in his interest.

**Held:** Appeal dismissed in law and equity. The letter of refusal quotes section 19(1)(a)(ii), which excludes those whose admission would cause or might reasonably be expected to cause excessive demands on health or social services. Clearly this is true of the refused dependant. His condition would cause that excessive demand whether or not the costs were met in part by the appellant and her husband. The refusal is therefore in accordance with the law.

With respect to compassionate or humanitarian considerations, the appellant with her husband and child comprise a complete family unit established in Vancouver. The proposed immigrants with the other five siblings appear to comprise an integrated family unit in the Philippines. Beyond the health of the refused dependant, there is no evidence of any circumstances justifying special consideration on humanitarian or compassionate grounds. Indeed, when questioned, the appellant was unable to say whether her parents intended to remain in Canada.

<b>Coram:</b> C.M. Campbell (Vice-Chairman), U. Benedetti and G. Tisshaw	<b>Case heard:</b>
Vancouver, October 21, 1981	<b>Judgment pronounced:</b> October 21, 1981
C.M. Campbell (in English; 3 pp.), concurred in by U. Benedetti and G. Tisshaw	<b>Reasons by:</b>
<b>no.:</b> 80-6348	<b>Docket</b>
<b>Counsel:</b> M. Elson, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.	

36.2

Stephonie Rosemarie Brown v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - ORPHAN - ORPHANED SISTER OF SPONSOR - SISTER BORN IN JAMAICA OUTSIDE OF MARRIAGE - MOTHER DECEASED BUT PUTATIVE FATHER STILL LIVING - JAMAICAN LAW ABOLISHING DISTINCTION BETWEEN LEGITIMATE AND ILLEGITIMATE CHILD - WHETHER SISTER ACCORDINGLY HAS LAWFUL FATHER MAKING HER INELIGIBLE TO BE SPONSORED AS ORPHAN - STATUS OF CHILDREN ACT, 1976 (JAMAICA), S. 3 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(e)

The appellant sponsored the application for landing made by her half-sister, allegedly an orphan. The application was refused on the grounds that the sponsoree did not qualify as an orphan and was therefore not eligible to be sponsored as such. The appellant had sponsored her half-sister's application under section 4(e) of the Immigration Regulations, 1978 as an orphaned sister, under eighteen years of age and unmarried. "Orphan" is defined in the Regulations as a person whose lawful father and mother are deceased. The sponsoree's parents were never married. Her mother is deceased. The respondent alleged that in a common-law relationship in Jamaica, the country of the sponsoree's citizenship, a father has all the legal rights as accorded to a mother, and accordingly is a lawful father. Therefore, the sponsoree cannot be considered an orphan, there being no proof of her father's death.

**Held:** Appeal dismissed. The question of the status of legitimacy is determined by the lex domicilii of the person in question. The sponsoree was born in Jamaica as were both her parents and therefore Jamaican law applies in determining whether she has a "lawful father" still living. The respondent filed a copy of the Status of Children Act, 1976, of Jamaica, together with a legal opinion. The legal opinion leaves no doubt that the sponsoree's father is a lawful father: by virtue of section 3 of the Status of Children Act, 1976 the question of lawful father does not arise in Jamaica as the Act clearly abolishes the concept of "lawful" in determining a father/child relationship.

Lewis, Linford v. M.E.I. (I.A.B. 80-9380), Davey, Teitelbaum, Suppa, March 10, 1981 (See CLIC, No. 30.7, September 28, 1981).

**Coram:** J.V. Scott (Chairman), U. Benedetti and B.M. Suppa  
**Judgment pronounced:** October 30, 1981  
**Case heard:** Toronto, September 24, 1981  
**Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by U. Benedetti and B.M. Suppa  
**Docket no.:** 80-9333  
**Counsel:** P. Brown, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

36.3 Kamljit Grewal Chahil v. Minister of Employment and Immigration

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS - SPOUSE - WHETHER SPONSOREE PARTY TO VALID MARRIAGE AT TIME OF MARRIAGE TO SPONSOR - BURDEN OF PROOF - PRESUMPTION OF VALIDITY OF MARRIAGE REBUTTED BY EVIDENCE OF PRIOR SUBSISTING MARRIAGE - SPONSOR FAILED TO SATISFY ONUS OF PROOF THAT SPONSOREE A SPOUSE**

**EVIDENCE - SPONSORSHIP - BURDEN OF PROOF - PROOF OF VALIDITY OF MARRIAGE - PRESUMPTION OF VALIDITY OF MARRIAGE REBUTTED BY EVIDENCE OF PRIOR SUBSISTING MARRIAGE - SPONSOR FAILED TO SATISFY ONUS OF PROOF THAT SPONSOREE A SPOUSE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(a)**

The appellant sponsored the application for landing made by her alleged husband. The application was refused on the grounds that the appellant and sponsoree were not legally married in that the sponsoree was party to a prior marriage in India that had not been terminated by divorce at the time he married the sponsor. A certificate of marriage in the record indicated the solemnization of a marriage in Quebec between the sponsor and sponsoree, who was described as "divorced" in the certificate. The record also contained an affidavit from the applicant's alleged first wife, to the effect that her marriage had been dissolved by customary divorce. As well, there was a copy of a decree of divorce issued by an Indian judge, attested to be a true copy, but it did not bear the judge's signature. There was also a certified true copy of a document originating from the office of the district and sessions judge in India stating that the copy of the decree of divorce was bogus. Counsel for the appellant argued that the certificate of marriage in Quebec created a presumption of the validity of the marriage.

**Held:** Appeal dismissed. This court is simply pronouncing, as it is required by law to do, whether or not an alleged spouse is a member of the family class. The appellant initially satisfied the burden of proof that the sponsoree was a person recognized by the laws of Quebec as her spouse by producing her marriage certificate, thus invoking a presumption of validity of the marriage. But this is a rebuttable presumption and the respondent introduced proof that the marriage was contracted before the dissolution of the sponsoree's prior marriage. If this is so, the second marriage would be void ab initio by the law of Quebec. The respondent has discharged the burden by producing the document indicating that the supposed divorce decree was bogus. The burden of proof of validity thus shifts back to the sponsor, who must produce evidence in addition to her marriage certificate that her alleged husband was free to marry her at the time the marriage took place. This she failed to do.

E. Teitelbaum (dissenting)

The question for determination is whether, for immigration purposes, the validity of a marriage may be questioned by a body other than a superior court. The Quebec marriage certificate has been accepted as valid by the respondent and by the Board. From this a

valid marriage can be presumed. Once a valid marriage exists, it is not for the Board to look behind the certificate. The Board can neither grant a divorce nor can it annul a marriage. By deciding that a person is not a member of the family class in circumstances such as those before the Board in this case, that is exactly what the Board is doing. I would allow the appeal.

Chahal, Marie Ange Alice v. M.E.I. (I.A.B. 77-1167), Houle, Legaré, Glogowski, April 19, 1978 (See CLIC, No. 1.21, March 20, 1979); Amer, Rita Mageau v. M.E.I. (I.A.B. 79-1030), Scott, Tremblay, Loiselle, October 12, 1979 (See CLIC, No. 12.5, February 25, 1980); Van Vulpen, Henry John v. M.E.I. (I.A.B. 79-6100), Weselak, Campbell, Teitelbaum, August 29, 1980 (See CLIC, No. 24.5, March 11, 1981); Khan, Denise Darlene v. M.E.I. (I.A.B. 79-9357), Weselak, Davey, Benedetti, December 10, 1980 (See CLIC, No. 25.8, April 20, 1981).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and E. Teitelbaum **Case heard:** Montreal, August 17, 1981 **Judgment pronounced:** October 14, 1981 **Reasons by:** J.V. Scott (in English; 5 pp.), concurred in by J.-P. Houle **Dissenting reasons by:** E. Teitelbaum (in English; 3 pp.) **Docket no.:** 80-1150 **Counsel:** H. Frumkin, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

#### 36.4

#### Erla Pierre v. Minister of Employment and Immigration

SPONSORSHIP - RIGHT OF SPONSOR TO KNOW CASE TO BE MET - INITIAL REFUSAL LETTER CONTAINED NO REASONS FOR REFUSAL - SUBSEQUENT LETTER RECEIVED AFTER FILING OF APPEAL SET OUT REASONS FOR REFUSAL - WHETHER SPONSOR INFORMED OF CASE TO BE MET SUFFICIENTLY IN ADVANCE OF HEARING OF APPEAL - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS

SPONSORSHIP - VALIDITY OF REFUSAL LETTER - SEVERAL GROUNDS OF REFUSAL SET OUT IN LETTER - REFUSAL VALID IF ONE GROUND ESTABLISHED AS VALID - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant sponsored her fiancé's application for permanent residence. The application was refused by letter sent to the appellant. However, the letter did not set out the reasons for refusal. The appellant filed an appeal from the refusal and some three months later received another letter, this time setting out the reasons for refusal, namely, that the sponsoree had made a false statement in his application for permanent residence and had presented conflicting documents.

**Held:** Appeal dismissed in law and equity. In the circumstances, this tribunal is satisfied that the appellant sufficiently knew the case she had to meet well before the hearing of the appeal. It is clear that the sponsoree gave a false answer to a question in his application. Having so found, it is unnecessary to deal with the second ground of refusal, the contradictory documents. Since a refusal is severable, one valid ground is sufficient, and the refusal is in accordance with the law.

As far as compassionate or humanitarian considerations are concerned, the sponsor may be sincere in her desire to be reunited with her fiancé, but the relationship is not deeply rooted and the sponsoree's sincerity is in doubt.

Coote, Marcelle v. M.E.I. (I.A.B. 79-1168), Loiselle, Houle, Tremblay, June 11, 1980 (See CLIC, No. 23.2, February 26, 1981).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and E. Teitelbaum **Case heard:** Montreal, August 19, 1981 **Judgment pronounced:** August 19, 1981 **Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by J.-P. Houle and E. Teitelbaum **Docket no.:** 81-1071 **Counsel:** U. Lalanne, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

36.5

Rabindra Sethi v. Minister of Employment and Immigration

SPONSORSHIP - MEMBER OF THE FAMILY CLASS - ADOPTED SON - ALLEGED ADOPTED SON OF SPONSOR ALREADY ADOPTED WHEN SPONSOR PURPORTED TO ADOPT HIM - SECOND ADOPTION IN CONTRAVENTION OF INDIAN LAW AND ACCORDINGLY INVALID - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (INDIA), S. 10(ii), 15 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, SS. 2(1), 4(b)

The appellant sponsored the application for permanent residence made by his adopted son. The application was refused on the basis that satisfactory evidence had not been produced to establish that he was the sponsor's legally adopted son. The respondent's allegation was that the son had been previously adopted in India and could not, by virtue of the Hindu Adoptions and Maintenance Act, 1956 be adopted by the sponsor.

**Held:** Appeal dismissed. Filed in the record was an affidavit sworn by a married couple to the effect that they adopted the sponsoree in 1975, in the presence of his natural mother. As no court order was introduced to show that the first adoption was illegal, the Board finds the sponsoree is not admissible as the son of the appellant. Under the Hindu Adoptions and Maintenance Act, 1956 no person is capable of being taken in adoption if he has already been adopted and no adoption which has been validly made can be cancelled. The refusal is therefore in accordance with the law.

**Coram:** D. Davey (Vice-Chairman), U. Bendetti and G. Tisshaw **Case heard:** Toronto, October 6, 1981 **Judgment pronounced:** October 6, 1981 **Reasons by:** U. Benedetti (in English; 5 pp.), concurred in by D. Davey and G. Tisshaw **Docket no.:** 81-9002  
**Counsel:** T.K. Lalla, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

36.6

Marie Georgiana Singh v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - NOTATION ON MEDICAL CERTIFICATE THAT CASE MAY BE REVIEWED IN EIGHT TO TWELVE MONTHS' TIME - WHETHER MEDICAL REVIEW OUGHT TO HAVE TAKEN PLACE PRIOR TO A REFUSAL - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(i), 19(1)(a)(i), 57, 79

The appellant sponsored her husband's application for landing. The application was refused on two grounds, one of which being that he was medically inadmissible. In support of the allegation of medical inadmissibility was a medical notification form that bore the notation "may be reviewed in 8 to 12 months". Counsel for the appellant argued that the case should have been reviewed within the eight to twelve month period before any refusal was issued. He claimed that the sponsoree had requested a review after the refusal but without success.

**Held:** Appeal dismissed in law and equity. We are unable to accept the argument of counsel for the appellant. An immigration or visa officer, upon receipt of a medical notification certificate in proper form, has no choice but to refuse a prospective immigrant so long as the certificate is still valid. Any commentary that the patient's state may be reviewed is a medical judgment that has nothing to do with immigration. The refusal is therefore in accordance with the law.

With regard to compassionate or humanitarian considerations, the appellant met her husband in 1978 and lived with him for a few months before they were married. Three days after the marriage, he was arrested by the Immigration authorities. He was deported and the appellant accompanied him to Germany, where she worked in order to support him. She returned to Canada to sponsor him and communicates frequently with him by phone and letter. There is no doubt that the appellant is sincere in her desire to have her husband here. However, her husband's motives in entering the marriage are suspect. He seems determined to get into Canada by any method. On the whole of the evidence, there are more elements against than for the granting of special relief.

J.-P. Houle (dissenting)

It is to the appellant that the right of appeal in law and equity has been given under section 79 of the Act. In my opinion, she has proven that her marriage is based on a mutual and deep attachment and that she desperately needs her husband's presence. It is not for me to comment on the appellant's choice of husband. I would hold that the granting of special relief is warranted.

Jean-Jacques, Soutien v. M.E.I. (I.A.B. 80-1187), Scott, Houle, Tremblay, May 20, 1981 (See CLIC, No. 32.9, November 26, 1981).

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** Montreal, October 5, 1981 **Judgment pronounced:** October 5, 1981 **Reasons by:** J.V. Scott (in English; 4 pp.), concurred in by R. Tremblay **Dissenting reasons by:** J.-P. Houle (in French; 3 pp.) **Docket no.:** 81-1035 **Counsel:** J. Rosenfeld, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

36.7 Nihal S. Soordhar v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - STATEMENT ON MEDICAL NOTIFICATION FORM THAT CASE MAY BE REVIEWED IN SIX MONTHS' TIME - PROCEDURE - REQUEST FOR ADJOURNMENT AND MEDICAL RE-EXAMINATION - WHETHER GROUNDS MADE OUT FOR ADJOURNMENT AND RE-EXAMINATION

PROCEDURE - SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - STATEMENT ON MEDICAL NOTIFICATION FORM THAT CASE MAY BE REVIEWED IN SIX MONTHS' TIME - REQUEST FOR ADJOURNMENT AND MEDICAL RE-EXAMINATION - WHETHER GROUNDS MADE OUT FOR ADJOURNMENT AND RE-EXAMINATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(i), (ii), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant sponsored the application for permanent residence made by his father and dependants. One of the dependants, the mother of the appellant, was refused on medical grounds. The medical notification form outlining the results of her medical examination contained the statement that the case might be reviewed in six months' time. At the hearing of the appeal, counsel for the appellant requested an adjournment and a direction for a new medical on the mother, in view of the statement contained in the medical notification form that the case may be reviewed in six months' time, as it was now a year and a half since the first medical was done.

**Held:** Appeal dismissed in law and equity. Nowhere in the Act or Regulations is there a duty imposed on an immigration officer or visa officer to hold an application in abeyance pending the expiration of the time that may be set out in the medical notification form indicating when the Health and Welfare authorities may be prepared to review the case. Furthermore, the comments made by medical officers in respect of the possibility of re-examination are not automatic grounds for granting an adjournment of the hearing and directing that the application be sent back to the visa officer for medical re-examination of the applicant. In the past, the Board has adjourned hearings in order that the state of health of the applicant concerned could be re-examined. However, it was usually done only when credible evidence was produced at the hearing to show no medical problems existed at the time of the hearing or when credible evidence was produced at the hearing to show a possible wrong original diagnosis had been made. In this appeal, no evidence was produced to indicate that medical problems were resolved. There was no evidence adduced either that the original diagnosis was possibly wrongly made. Accordingly, the Board refuses to grant an adjournment for a medical re-examination. Moreover, it is clear on the evidence that the refusal was made in accordance with the law.

**Coram:** F. Glogowski (Vice-Chairman), E. Teitelbaum and G. Tisshaw **Case heard:** Toronto, August 25, 1981 **Judgment pronounced:** October 30, 1981 **Reasons by:** F. Glogowski (in English; 5 pp.), concurred in by E. Teitelbaum and G. Tisshaw **Docket no.:** 80-9234 **Counsel:** J.D. Philp, Barrister and Solicitor, for the appellant; L. Williams, Esq., for the respondent.

---

36.8 Zillay Hasan Syed v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL OF APPLICATION BASED ON FAILURE TO PRODUCE DOCUMENTS REQUIRED BY VISA OFFICER - DOCUMENT PRODUCED CONTAINED ALTERATION - WHETHER ALTERATION RELEVANT AND MATERIAL TO ADMISSIBILITY - WHETHER EVIDENCE OF ALTERATION GOES TO CREDIBILITY OF APPLICANT

EVIDENCE - SPONSORSHIP - CONFLICTING DOCUMENTS PRODUCED - ALTERATION OF DOCUMENT PRODUCED - WHETHER ALTERATION RELEVANT AND MATERIAL TO ADMISSIBILITY OF APPLICANT FOR PERMANENT RESIDENCE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 8(1), 9(2), (3), (4), 19(2)(d), 79

The appellant sponsored the application for permanent residence made by his parents and brother. The application was refused on the basis that the brother had failed to produce such documentation as required by a visa officer to establish that his admission would not be contrary to the Act or Regulations. One of the documents produced had been disavowed by the issuing authorities on account of alterations.

**Held:** Appeal dismissed in law and equity. On his application for landing, the brother shows his date of birth as December 25, 1960. In support of his application, he produced school certificates, all of which show the same date of birth. However, his date of admission to school on one of the school leaving certificates has been altered. This is the document referred to in the refusal letter. There is no proof as to who altered the certificate, but the fact of alteration was not contested. Counsel for the appellant argued that the alteration was not material and therefore irrelevant. However, the school certificates required by the visa officer are in fact relevant to the proof of age of an applicant. If, as in this case, school certificates are required to corroborate information given in the application for permanent residence, and two of them are conflicting in that they show attendance at two schools at the same time, and further, there is evidence that one of them has been tampered with, the applicant's whole credibility is cast in doubt and he has failed to satisfy the burden of proof resting on him to establish his admissibility. The refusal is therefore in accordance with the law.

Kang v. M.E.I. (1981) 37 N.R. 551 (Fed. C.A.).

**Coram:** J.V. Scott (Chairman), R. Tremblay and E. Teitelbaum **Case heard:** Montreal, August 21, 1981 **Judgment pronounced:** October 16, 1981 **Reasons by:** J.V. Scott (in English; 6 pp.), concurred in by R. Tremblay and E. Teitelbaum **Docket no.:** 81-1010  
**Counsel:** J.F. Goyette, Barrister and Solicitor, for the appellant; M.A. Kulba, Esq., for the respondent.

---

36.9 Mei-Chun Tsang v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - MOTION FOR PRODUCTION OF DOCUMENTS FROM PERSON NOT A PARTY TO APPEAL - WHETHER BOARD HAS JURISDICTION TO ORDER PRODUCTION

MOTION - SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - MOTION FOR PRODUCTION OF DOCUMENTS FROM PERSON NOT A PARTY TO APPEAL - WHETHER BOARD HAS JURISDICTION TO ORDER PRODUCTION

JURISDICTION OF BOARD - SPONSORSHIP - MOTION - MOTION FOR PRODUCTION OF DOCUMENTS FROM PERSON NOT A PARTY TO APPEAL - WHETHER BOARD HAS JURISDICTION TO ORDER PRODUCTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 65(2), 79 - IMMIGRATION APPEAL BOARD RULES (APPELLATE), 1981, RULES 10, 12

The appellant sponsored an application for landing made by her father and accompanying dependants. The application was refused by reason of the medical inadmissibility of the father. Counsel for the sponsor brought this motion for an order requiring the respondent and Medical Services, Health and Welfare Canada, to produce the evidence upon

which the certificate of medical inadmissibility filed in the appeal record was based, on the grounds that the information was required in order to prepare for the appeal hearing. A previous motion had been brought (see CLIC, No. 29.14, August 17, 1981) but was dismissed without prejudice.

**Held:** Motion dismissed without prejudice to the filing of a further motion. Service of the motion was improper in that, according to the affidavit of service, it was served on Health and Welfare Medical Services rather than on an individual. The notice of motion was defective as it referred to an order requiring Medical Services to produce evidence, when Medical Services is not a legal person against whom such an order may be made. Furthermore, the motion had no return date.

Moreover, as a general rule, a court has no power to order the production of documents as against a person who is not a party to the action. The Board has no rule that expressly authorizes the making of an order against a person not a party. However, there is a rule providing for the calling of witnesses and setting out the procedure should the person who has been summoned fail to appear.

Petursson v. Petursson [1966] 2 O.R. 626; Doig et al. v. Hemphill [1942] O.W.N. 391; McCurdy v. Oak Tire and Rubber Co. Ltd. (1918) 44 O.L.R. 235.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto, August 6, 1981 **Judgment pronounced:** September 24, 1981 **Reasons by:** D. Davey (in English; 5 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 80-9437  
**Counsel:** C.L. Rotenberg, Q.C., for the applicant; W.A. MacIntyre, Esq., for the respondent.

---

36.10 Slawomir Krzysztof Hubicki

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF RELIGION AND POLITICAL OPINION - NO EVIDENCE OF ARREST BY AUTHORITIES IN POWER - APPLICANT IN FACT FEARFUL OF CONSEQUENCES OF EVADING MILITARY SERVICE AND DISSATISFIED WITH ECONOMIC SITUATION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of Poland, claimed to be a refugee on the basis of his religion and his political opinion. He claims that while he was at the Maritime Academy in Darlowo, Poland he was not allowed to go to church in uniform or to have a cross or religious picture hanging over his bed in the Academy; that compulsory Sunday activities at the Academy prevented church attendance; that he was pressured to join the communist party and harassed because he would not; that he was denied leave given to those who were communist party members; and that after graduation he had difficulty in obtaining work. He alleged that while at the Academy, he received forbidden publications of the KOR dissident organization organized to protect the rights of workers. He participated in strikes of shipyard workers and made a monetary contribution to the trade union movement. He says it was because of his fear of arrest for helping the trade union movement in Poland that he jumped ship when it arrived in Vancouver.

**Held:** Application not allowed to proceed, applicant is determined not to be a Convention refugee. The examples the applicant gives of his persecution on religious grounds seem involved with the rules and discipline of a military academy more than persecution on religious grounds.

It is the view of the Court that the incidents claimed to be persecution do not constitute persecution under the definition set out in subsection 2(1) of the Act. The applicant was never arrested and questioned by the authorities. The prime bases of his flight would appear to be economic and to avoid military service, neither of which reasons form part of the definition of Convention refugee.

**Coram:** J.V. Scott (Chairman), F. Glogowski and W.M. Hlady **Judgment pronounced:**  
October 19, 1981 **Reasons by:** W.M. Hlady (in English; 3 pp.), concurred in by J.V.  
Scott and F. Glogowski **Docket no.:** 81-6325.

---

36.11 Jose Rafael Parraguez v. Minister of Employment and Immigration  
Maria Arce Olquin Parraguez v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - PROCEDURE - BOARD ORIGINALLY REFUSED TO ALLOW FEMALE APPLICANT'S CLAIM TO PROCEED FOR LACK OF PERFECTION - AT HEARING OF MALE APPLICANT'S CLAIM, BOARD REVERSED DECISION IN RESPECT OF FEMALE APPLICANT AND ALLOWED HER CLAIM TO PROCEED TO FULL HEARING

PROCEDURE - REFUGEE - REDETERMINATION - BOARD ORIGINALLY REFUSED TO ALLOW FEMALE APPLICANT'S CLAIM TO PROCEED FOR LACK OF PERFECTION - AT HEARING OF MALE APPLICANT'S CLAIM, BOARD REVERSED DECISION IN RESPECT OF FEMALE APPLICANT AND ALLOWED HER CLAIM TO PROCEED TO FULL HEARING - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicants, husband and wife, citizens of Chile, claimed to be Convention refugees. When the female applicant filed her application for redetermination, the record filed with the application lacked the transcript of her examination under oath, her declaration under oath and the Minister's decision in respect of her claim. The Board accordingly refused to allow her application to proceed, for want of perfection. The male applicant's application was complete, however, and the Board allowed it to proceed to a full hearing.

**Held:** Applications having been allowed to proceed, applicants are determined to be Convention refugees. At the outset of the hearing, the Board, considering that the female applicant's application had not been allowed to proceed on purely technical grounds (lack of perfection), reversed its decision in respect of her application and allowed it to proceed to a full hearing together with her husband's application.

Although there were some small discrepancies in the evidence he gave at the hearing and at his examination under oath, considering the evidence as a whole, the male applicant's story of persecution and harassment by the Chilean authorities was plausible in the context of his activities and political involvement. His wife was not personally persecuted or harassed but is determined to be a refugee based on the Board's acceptance of her husband's claim.

**Coram:** J.-P. Houle (Vice-Chairman), F. Glogowski and R. Tremblay **Case heard:**  
Montreal, September 23, 1981 **Judgment pronounced:** September 23, 1981 **Reasons by:**  
F. Glogowski (in English; 2 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket**  
**no.:** 80-1118, 80-1119 **Counsel:** H. Tsimberis, Barrister and Solicitor, for the  
applicants; L.G. Rivard, Esq., for the respondent.

---

36.12 Guillermo Tello Silva Vergara v. Minister of Employment and Immigration

REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - APPLICANT NOT CREDIBLE - ECONOMIC REFUGEE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 2(1), 70

The applicant, a citizen of Chile, claimed to be a Convention refugee by reason of his political opinion. He alleged that he was a supporter of the Socialist Party in Chile. Immediately after the coup, he lived clandestinely for about a month, fearing that his political activities would involve him in difficulties with the Chilean authorities.

When he subsequently returned to his place of employment, he was refused employment on the ground that the military had visited his place of employment and his former employer wanted no trouble. In November, 1973, the applicant was arrested and detained for three months and maltreated. He was released with a warning not to engage in further political activities. Thereafter, he had difficulty finding work, due, he alleged, to his prior political affiliations. In 1974, the applicant joined a clandestine cell of the socialist underground. He was not subjected to further open harassment by the authorities. Four years later he was warned by the leader under whom his clandestine activities were carried on to leave Chile. This he did without difficulty.

**Held:** Application having been allowed to proceed, applicant is determined not to be a Convention refugee. The applicant was not a credible witness. The testimony of two witnesses appearing on behalf of the applicant was of little value in support of the applicant's case. The applicant failed to establish that he has a well-founded fear of persecution. Even if one accepts his story of his detention in 1973-74, he does not appear to have suffered any persecution thereafter; at most, he is an "economic refugee".

**Coram:** J.V. Scott (Chairman), J.-P. Houle and R. Tremblay **Case heard:** Montreal, August 2, October 8, 1981 **Judgment pronounced:** October 9, 1981 **Reasons by:** J.V. Scott (in English; 3 pp.), concurred in by J.-P. Houle and R. Tremblay **Docket no.:** 80-1064 **Counsel:** P.-Y. Bourdeau, Barrister and Solicitor, for the applicant; M.A. Kulba, Esq., for the respondent.

---

36.13

Miriama Baygum Buffum v. Minister of Employment and Immigration

REMOVAL ORDER - DEPORTATION ORDER - DEPORTATION ORDER MADE ON BASIS THAT APPELLANT NOT A CANADIAN CITIZEN OR PERMANENT RESIDENT AND HAD ENGAGED IN EMPLOYMENT AND REMAINED IN CANADA WHEN UNAUTHORIZED - DEPORTATION INQUIRY REOPENED AND ORDER AMENDED - APPEAL NOT FILED WITHIN TIME PRESCRIBED FOLLOWING SERVICE OF FIRST ORDER BUT WITHIN PRESCRIBED TIME WITH RESPECT TO AMENDED ORDER - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL - WHETHER APPELLANT HAD ABANDONED PERMANENT RESIDENCE IN CANADA

JURISDICTION OF BOARD - REMOVAL ORDER - DEPORTATION ORDER - DEPORTATION INQUIRY REOPENED AND ORDER AMENDED - APPEAL NOT FILED WITHIN TIME PRESCRIBED FOLLOWING SERVICE OF FIRST ORDER BUT WITHIN PRESCRIBED TIME WITH RESPECT TO AMENDED ORDER - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL - IMMIGRATION APPEAL BOARD RULES (APPELLATE), 1981, RULES 9, 22

The appellant, a citizen of New Zealand, was ordered deported from Canada on the grounds that she was a person, other than a Canadian citizen or a permanent resident, who had engaged in employment without an authorization and had entered Canada as a visitor and remained for a longer period than she was authorized to remain. The deportation order included the appellant and her daughter. From this deportation order the appellant did not appeal. In February, 1981, some two months after the deportation order was made, the inquiry was reopened, the daughter was removed from the order and the order was confirmed in respect of the appellant. The appellant filed her appeal four days later. At the outset of the hearing, the respondent contended the Board was without jurisdiction since the notice of appeal had not been filed within five days of the service of the first deportation order. The appellant argued that the appeal had been filed on time and that she was a permanent resident and therefore had a right of appeal to the Board under section 72 of the Act.

**Held:** Appeal allowed in law, deportation order quashed. Rule 9 of the Immigration Appeal Board Rules (Appellate), 1981 authorizes the Board to accept the late filing of an appeal made pursuant to section 72(1) of the Act on such terms as seem just. In this case, the amended order altered the appellant's circumstances entirely. It provided for her deportation and allowed her daughter to remain in Canada. It seems just to the Board that the appeal should be allowed to go forward. Further, the Board considers the amended order was in effect a new order and the appellant did in fact appeal from that order within the prescribed time.

Moreover, it is the view of the Board that the appellant, who became a landed immigrant in 1978, never intended to abandon Canada as her place of permanent residence. When she left Canada with her daughter in 1978 she was distraught and had made no considered decision about her future. Her condition was a result of her marriage relationship. She went home to be with her relatives. The decision to be made was whether she would live in Canada. She did not lose her status as a permanent resident. The deportation order is accordingly invalid.

**Coram:** C.M. Campbell (Vice-Chairman), R. Tremblay and W.M. Hlady **Case heard:**  
Calgary, October 29, 1981 **Judgment pronounced:** October 29, 1981 **Reasons by:**  
C.M. Campbell (in English; 5 pp.), concurred in by R. Tremblay and W.M. Hlady **Docket**  
**no.:** 81-6082 **Counsel:** B. Plumer, Barrister and Solicitor, for the appellant; D.M.  
Hanbury, Esq., for the respondent.

---

36.14 Joyce Cornelia Tannis v. Minister of Employment and Immigration

MOTION - MOTION FOR REHEARING OF APPEAL FROM DEPORTATION ORDER MADE AGAINST APPLICANT -  
EVIDENCE OF LACHES AND BAD FAITH - APPLICATION DISMISSED

DEPORTATION ORDER - MOTION FOR REHEARING OF APPEAL FROM DEPORTATION ORDER MADE AGAINST  
APPLICANT - EVIDENCE OF LACHES AND BAD FAITH - APPLICATION DISMISSED - IMMIGRATION ACT,  
R.S.C. 1970, C. I-2 (repealed), S. 5(t) - IMMIGRATION REGULATIONS, PART I (revoked), S.  
28(1)

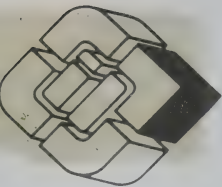
The applicant brought a motion for a rehearing of her appeal in respect of a deportation order made against her in 1973. When the appeal had come on for hearing in 1974, the appellant failed to appear and the Board dismissed her appeal and ordered that the deportation order made against her be executed as soon as practicable. However, the immigration authorities were unable to locate the appellant in order to execute the deportation order. She surfaced to bring this motion and filed in support of it an affidavit to the effect that she had never been informed of the date of the hearing of her appeal and that she had kept the immigration authorities informed of every change of address.

**Held:** Application dismissed. The notice of hearing of the appeal was in fact sent to the address that the applicant had indicated on the notice of appeal as being a good address for service. The applicant failed to inform the Board of any change of address although this request was set out on the notice of appeal form. She also admitted at the hearing of this motion that after 1974 she did not inform immigration officials of her changes of address. The Board has reached the conclusion that the equitable doctrine of laches is applicable. Seven years have passed since the Board dismissed the appeal and ordered her deported. The applicant took no action in the interim to have her appeal reheard. Moreover, there is a strong indication that after 1974 the applicant deliberately eluded immigration officials and is therefore coming before the Board having acted in bad faith.

Calamusa v. M.M.I. (1975) 10 I.A.C. 319/325.

**Coram:** D. Davey (Vice-Chairman), E. Teitelbaum and B.M. Suppa **Case heard:** Toronto,  
October 21, 1981 **Judgment pronounced:** October 21, 1981 **Reasons by:** D. Davey (in  
English; 5 pp.), concurred in by E. Teitelbaum and B.M. Suppa **Docket no.:** 81-9449  
**Counsel:** S. Ramkissoon, Esq., for the applicant; J.D. Taylor, Esq., for the respondent.





# Canadian Law Information Council Conseil canadien de la documentation juridique

Place de Ville, Tower/Tour 'B', 112 rue Kent Street, Suite 2010 Ottawa, Ontario, K1P 5P2 (613) 236-9766

No. 37

Date April 22, 1982

## Notes of Recent Decisions rendered by the Immigration Appeal Board

by Philippa Wall

**Immediate delivery of full texts of all decisions summarized in this or previous issues is available from the Council at a cost of \$5.00 for the first ten (10) pages and \$0.25 for each page thereafter.** All decisions are available in English or French. Orders can be made by telephone or mail and they will be processed the same day. The rate includes handling and postage (first class). Express delivery is available at cost. While every effort is made to ensure accuracy and completeness of the summaries, no responsibility is assumed for errors or omissions.

These summaries are published under the authority of J.V. Scott, Q.C., Chairman of the Immigration Appeal Board. In view of Council's objectives, copying of portions of its publications is not restricted. However, copies should identify the source of the information and include the following notice: "The objects of the Canadian Law Information Council are to promote the acquisition and dissemination of the law in Canada and to enhance the quality and increase the availability of information pertaining to the law in Canada." Copies of substantial portions of any publication should be obtained from the Council's Offices.



#### SPONSORSHIPS

37.1	80-9127	Benipal, Kuldeep v. Minister of Employment and Immigration
37.2	80-9364	Desai, Balwant v. Minister of Employment and Immigration
37.3	80-6280	Duhra, Resham Singh v. Minister of Employment and Immigration
37.4	81-9661	Khela, Dilbagh Singh v. Minister of Employment and Immigration
37.5	80-9241	Patel, Balvantbhai Thakorbhai v. Minister of Employment and Immigration
37.6	80-9382	Podur, Luciamma v. Minister of Employment and Immigration
37.7	80-9432	Tse, Yuen v. Minister of Employment and Immigration

#### REFUGEES

37.8	81-1014	Gonzalez Quiroga, Oriana Gloria v. Minister of Employment and Immigration
37.9	81-1273	Hussein, Mohammed Amin

#### PROCEDURE

37.1	80-9127	Benipal, Kuldeep v. Minister of Employment and Immigration
37.3	80-6280	Duhra, Resham Singh v. Minister of Employment and Immigration
37.5	80-9241	Patel, Balvantbhai Thakorbhai v. Minister of Employment and Immigration
37.6	80-9382	Podur, Luciamma v. Minister of Employment and Immigration

#### JURISDICTION OF BOARD

37.2	80-9364	Desai, Balwant v. Minister of Employment and Immigration
37.9	81-1273	Hussein, Mohammed Amin

37.1 Kuldeep Benipal v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON UNTRUTHFUL ANSWERS CONCERNING DOCUMENTATION REQUIRED BY VISA OFFICER AND PRODUCTION OF FRAUDULENT DOCUMENTATION - AT HEARING, APPELLANT REQUESTED ADJOURNMENT TO OBTAIN VITAL DOCUMENT - APPELLANT HAD HAD AMPLE OPPORTUNITY TO OBTAIN DOCUMENT AND SUPPLY IT TO IMMIGRATION AUTHORITIES - ADJOURNMENT DENIED

PROCEDURE - REQUEST FOR ADJOURNMENT - SPONSORSHIP - AT HEARING, APPELLANT REQUESTED ADJOURNMENT TO OBTAIN VITAL DOCUMENT - APPELLANT HAD HAD AMPLE OPPORTUNITY TO OBTAIN DOCUMENT AND SUPPLY IT TO IMMIGRATION AUTHORITIES - ADJOURNMENT DENIED - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(3), 19(2)(d), 79

The appellant sponsored her father's application for permanent residence. The application included the appellant's mother and brother. The application was refused on the basis that the appellant's father did not answer truthfully questions put to him concerning a school certificate purporting to establish his relationship to his alleged son. The school certificate was the only document submitted in support of the relationship and was found by the relevant authorities not to be authentic. At the hearing of the appeal, the appellant testified that a birth certificate for her brother was available in India and sought an adjournment to obtain the document.

Held: Adjournment denied; appeal dismissed. The refusal letter is valid, as the applicants submitted a fraudulent document to the Immigration authorities.

The birth certificate, vitally important to this case, was never introduced to the Immigration authorities in New Delhi or at the hearing of the appeal. The Board refused the adjournment for the purpose of introducing this document as it felt that since May, 1979 (the date of the sponsorship application) the appellant has had plenty of opportunity to supply this document to the authorities.

Coram: D. Davey (Vice-Chairman), U. Benedetti and E. Teitelbaum Case heard: Toronto, December 2, 1981 Judgment pronounced: December 2, 1981 Reasons by: U. Benedetti (in English; 4 pp.), concurred in by D. Davey and E. Teitelbaum Docket no.: 80-9127 Counsel: R.N. Sharma, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

37.2 Balwant Desai v. Minister of Employment and Immigration

JURISDICTION OF BOARD - SPONSORSHIP - RIGHT OF APPEAL - APPELLANT NOT INFORMED OF RIGHT OF APPEAL IN LETTER REFUSING APPLICATION FOR LANDING - WROTE TO MINISTER REQUESTING APPEAL FROM REFUSAL - ERRONEOUSLY INFORMED BY IMMIGRATION AUTHORITIES HE HAD NO RIGHT OF APPEAL - WHETHER BOARD HAS JURISDICTION TO ENTERTAIN APPEAL

SPONSORSHIP - MEMBER OF FAMILY CLASS - ADOPTED SON - WHETHER ADOPTION VALID - HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (INDIA) - IMMIGRATION REGULATIONS, PART I (revoked), S. 31(1)(f)

The appellant sponsored his adopted son's application for permanent residence in Canada. The application was refused on the grounds that the son's adoption did not comply with the requirements of the Indian Hindu Adoptions and Maintenance Act. At the hearing of the appeal, the respondent challenged the Board's jurisdiction to hear the appeal, in that a notice of appeal had not been filed within the prescribed time. A refusal letter had been sent to the appellant in July, 1976 but it did not set out his right of appeal. When he received the letter, the appellant wrote to the Minister and stated that he wished to appeal from the unfavourable decision regarding his son. He was subsequently informed by letter from the Immigration authorities that he had no right of appeal because his alleged son did not fall within a sponsorable class. He was given the same advice when he attempted to file an appeal with the Board. He finally served an immigration officer with a notice of appeal in August, 1980.

**Held:** Appeal allowed in law and equity. With respect to the jurisdictional question, the appellant was a Canadian citizen at the time he filed his application and therefore had the right of appeal when the refusal was made in 1976. The appellant attempted to file an appeal immediately on receipt of the letter of refusal. In the interests of natural justice, the Board accepts the letter sent to the Minister as the appellant's appeal from the refusal of his application.

Furthermore, the Board is satisfied that the sponsoree is the adopted son of the appellant, for he met the age requirement set out in the Hindu Adoptions and Maintenance Act at the time he was adopted.

M.E.I. v. Ma, Lai Wo (I.A.B. 78-6148), Davey, Campbell, Teitelbaum, April 25, 1979 (See CLIC, No. 7.7, October 9, 1979); Chaukla, Ajai Sheel v. M.E.I. (I.A.B. 77-7004), C.M. Campbell, Glogowski, J.C.A. Campbell, February 28, 1978; Grewal, Gurdev Singh v. M.E.I. (I.A.B. 80-9150), Weselak, Benedetti, Tisshaw, January 20, 1981 (See CLIC, No. 27.6, June 25, 1981).

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, November 17, 1981 **Judgment pronounced:** January 7, 1982 **Reasons by:** D. Davey (in English; 9 pp.), concurred in by U. Benedetti and G. Tisshaw **Docket no.:** 80-9364  
**Counsel:** C.C. Hoppe, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

37.3 Resham Singh Duhra v. Minister of Employment and Immigration

SPONSORSHIP - PROCEDURE - WHETHER I.A.B. RULES (APPELLATE), 1981 RETROACTIVE IN OPERATION

PROCEDURE - SPONSORSHIP - WHETHER I.A.B. RULES (APPELLATE), 1981 RETROACTIVE IN OPERATION - IMMIGRATION ACT, 1976, S.C. 1976-77, c. 52, ss. 2(1), 9(3), 19(2)(d), 79 - IMMIGRATION REGULATIONS, 1978, ss. 4, 5, 6 - IMMIGRATION APPEAL BOARD RULES (APPELLATE), 1981, RULE 32

The appellant sponsored his father's application for permanent residence. The application was refused on the basis that the relationship between the sponsor and his father had not been proven. The hearing of the appeal was adjourned at the request of appellant's counsel, in order that further documents in support of his case might be obtained from the respondent. At the same time, counsel raised three legal points for a ruling by the Board: the applicability of the Kang decision to this case; whether the application for permanent residence had been refused under the correct section of the Regulations; and whether I.A.B. rule 32 respecting the documents that are to comprise the record was retroactive so as to encompass records prepared prior to the day the rule came into force.

**Held:** Appeal allowed in law. When the hearing was resumed, in the light of the further documents submitted by the appellant, the Board held the relationship between the sponsor and his father had been proven.

Furthermore, as to the points raised by appellant's counsel, the Kang decision deals with the giving of untruthful answers with respect to admissibility and is not applicable in this case; section 5 of the Regulations provides that where a sponsor is a Canadian citizen, his father can be a father other than as described in paragraph 4(c) -- section 5 is in fact a modification of section 4 and the application was properly refused under the latter section. Finally, it is the view of the Board that there is no requirement that the respondent revise records prepared pursuant to the former I.A.B. Rules. However, should the appellant make a request for production of documents consistent with the new Rules, then to the extent this request can be met, the respondent has an obligation to do so.

**Coram:** C.M. Campbell (Vice-Chairman), W.M. Hlady and B. Howard (at initial hearing); D. Davey (Vice-Chairman), U. Benedetti and W.M. Hlady (at resumed hearing) **Case heard:** Vancouver, August 20, December 9, 1981 **Judgment pronounced:** December 9, 1981 **Reasons by:** C.M. Campbell (in English; 2 pp.), concurred in by W.M. Hlady and B. Howard; and W.M. Hlady (in English; 2 pp.), concurred in by D. Davey and U. Benedetti **Docket no.:** 80-6280 **Counsel:** D.G. McCrea, Barrister and Solicitor, for the appellant; D.M. Hanbury, Esq., for the respondent.

---

37.4

Dilbagh Singh Khela v. Minister of Employment and Immigration

SPONSORSHIP - APPLICATION FOR PERMANENT RESIDENCE FILED BY SPONSOREES IN INDIA - SECOND APPLICATION FILED FROM WITHIN CANADA WHILE PRIOR APPLICATION STILL PENDING WITH IMMIGRATION AUTHORITIES - WHETHER FIRST-MADE APPLICATION DEEMED ABANDONED WHEN SPONSOREES FILED SECOND APPLICATION IN CANADA - COMPASSIONATE OR HUMANITARIAN CONSIDERATIONS - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 9(1), (3), 19(2)(d), 79

The appellant sponsored the application for permanent residence made in India by his father and accompanying dependants. Before the application was processed in India by the Immigration authorities there, the sponsor's father and dependants arrived in Canada as visitors and filed a new application for permanent residence here. The sponsor was informed by letter that no further consideration would be given to the latter application as the law did not allow an immigrant to obtain a visa for permanent residence from within Canada. The application was refused on the grounds that the sponsor's father had not submitted satisfactory evidence to establish the age of his alleged dependant. At the hearing of the appeal, counsel for the respondent submitted that the application filed in India had been abandoned when the sponsorees left India without waiting for an answer from the visa officer and a new application was made in Canada. This argument is relevant, as the application of the father in Canada was not filed until after his dependant had reached his twenty-first birthday and had therefore become ineligible for sponsorship as a dependant.

**Held:** Appeal dismissed in law and equity. The Board concludes, basing its decision on Kulle, Balwant Singh v. M.E.I. and Li, Pak v. M.E.I. that the application for permanent residence filed in India, which had been neither cancelled nor refused, was still under consideration when the family entered Canada as visitors. Their coming to Canada did not constitute an abandonment of their application. The filing of a new application for processing within Canada was a continuation of the process of seeking to come to Canada as permanent residents. However, the Board finds that the documentation submitted in support of the age of the accompanying dependant did not adequately prove his age and the refusal is therefore valid. Furthermore, there do not exist such compassionate or humanitarian considerations as would warrant the granting of special relief.

Kulle, Balwant Singh v. M.E.I. (I.A.B. 78-6041), Scott, Campbell, Glogowski, June 1, 1979 (See CLIC, No. 9.3, November 26, 1979); Li, Pak v. M.E.I. (I.A.B. 79-6276), Campbell, Benedetti, Howard, April 1, 1981 (See CLIC, No. 30.8, September 28, 1981); M.M.I. v. Tsiafakis [1977] 2 F.C. 216, 73 D.L.R. (3d) 139 (C.A.); Lawrence v. M.M.I. [1980] 1 F.C. 779 (T.D.).

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and E. Teitelbaum **Case heard:** Toronto, November 10, 1981 **Judgment pronounced:** January 18, 1982 **Reasons by:** D. Davey (in English; 9 pp.), concurred in by U. Benedetti and E. Teitelbaum **Docket no.:** 81-9661 **Counsel:** B. Knazan, Barrister and Solicitor, for the appellant; J.D. Taylor, Esq., for the respondent.

---

37.5 Balvantbhai Thakorbhay Patel v. Minister of Employment and Immigration

SPONSORSHIP - PROCEDURE - REFUSAL BASED ON MEDICAL INADMISSIBILITY OF SPONSOREE - AT APPEAL HEARING, MEDICAL CERTIFICATES FILED BY SPONSOR RESPECTING SPONSOREE'S CONDITION - BOARD ADJOURNED HEARING AND DIRECTED RESPONDENT TO REVIEW AND ASSESS CERTIFICATES

PROCEDURE - SPONSORSHIP - REFUSAL BASED ON MEDICAL INADMISSIBILITY OF SPONSOREE - AT APPEAL HEARING, MEDICAL CERTIFICATES FILED BY SPONSOR RESPECTING SPONSOREE'S CONDITION - BOARD ADJOURNED HEARING AND DIRECTED RESPONDENT TO REVIEW AND ASSESS CERTIFICATES - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(i), 79

The appellant sponsored his father's application for permanent residence which application was refused on the grounds that the father was medically inadmissible. At the hearing of the appeal, medical certificates from doctors in India were filed by the appellant with the Board as to the condition of the father's tuberculosis.

**Held:** Appeal adjourned, medical exhibits directed to be referred by respondent to appropriate Immigration office for review and assessment; appeal subsequently allowed in law. As a result of the medical certificates filed with the Board and the oral evidence heard, the Board adjourned the appeal sine die and directed that the respondent refer the medical certificates to the Immigration office in New Delhi, India for assessment by them. The Board subsequently received a declaration made by a medical officer from Health and Welfare Canada, acting on behalf of the respondent, wherein he diagnosed the father's condition as "pulmonary tuberculosis inactive." The Board, having considered this document, ordered that the appeal be allowed in law as the refusal was not in accordance with the law.

<b>Coram:</b> A.B. Weselak (Vice-Chairman), U. Benedetti and B.M. Suppa	<b>Case heard:</b>
Toronto, November 9, 1981	<b>Judgment pronounced:</b> November 9, 1981
A.B. Weselak (in English; 2 pp.), concurred in by U. Benedetti and B.M. Suppa	<b>Reasons by:</b>
<b>no.:</b> 80-9241	<b>Docket</b>
<b>Counsel:</b> L. Williams, Esq., for the respondent.	

---

37.6 Luciamma Podur v. Minister of Employment and Immigration

SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - AT HEARING, MEDICAL EVIDENCE PRODUCED SHOWING NO EVIDENCE OF DISEASE - BOARD ORDERED ADJOURNMENT FOR REVIEW OF PROSPECTIVE IMMIGRANT'S MEDICAL CONDITION

PROCEDURE - SPONSORSHIP - REFUSAL BASED ON MEDICAL GROUNDS - AT HEARING, MEDICAL EVIDENCE PRODUCED SHOWING NO EVIDENCE OF DISEASE - BOARD ORDERED ADJOURNMENT FOR REVIEW OF PROSPECTIVE IMMIGRANT'S MEDICAL CONDITION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 19(1)(a)(i), 79 - IMMIGRATION REGULATIONS, 1978, S. 6(1)(a)

The appellant sponsored her father's application for permanent residence, which application included the father's accompanying dependants. It was alleged that one of the dependants was a danger to public health or safety by reason of tuberculosis, thereby rendering all the prospective immigrants inadmissible under paragraph 6(1)(a) of the Regulations. In the record was a medical certificate signed, as required, by two doctors, but it was not signed by either doctor until after the expiry date of the certificate. In addition, at the hearing of the appeal, the appellant filed two medical reports indicating that the inadmissible dependant showed no evidence of active pulmonary tuberculosis.

**Held:** Hearing adjourned to allow current medicals to be forwarded to the immigration office handling the application; appeal subsequently allowed in law. Because the validity date of the medical certificate had expired prior to the doctors' signing it and since the appellant brought medical reports before the Board showing no evidence of disease, the Board, with the concurrence of counsel, adjourned to allow the current medicals to be forwarded to the immigration office overseas processing the application, for review by them. A telex was subsequently received from that immigration office to the effect that the tuberculosis was indeed inactive. Therefore, the refusal letter is not in accordance with the law. The dependant in question is not a danger to public health or safety.

**Coram:** D. Davey (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, March 19, November 30, 1981 **Judgment pronounced:** November 30, 1981 **Reasons by:** D. Davey (in English; 2 pp.), concurred in by U. Benedetti and G. Tisshaw **Docket no.:** 80-9382 **Counsel:** N. Goodman, Barrister and Solicitor, for the appellant; W.A. MacIntyre, Esq., for the respondent.

---

37.7 Yuen Tse v. Minister of Employment and Immigration

**SPONSORSHIP - MEMBER OF THE FAMILY CLASS - SON, DAUGHTER - ISSUE OF POLYGAMOUS MARRIAGE IN CHINA - LEGITIMATE BY CHINESE LAW - WHETHER LEGITIMATE FOR IMMIGRATION PURPOSES - CHILDREN'S LAW REFORM ACT, 1977, S.O. 1977, C. 41, S. 1 - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 79 - IMMIGRATION REGULATIONS, 1978, S. 2(1)**

The appellant sponsored the application for permanent residence of his three children, which application was refused on the grounds that the children did not come within the definition of son or daughter set out in the Immigration Regulations, 1978. The children are the issue of the sponsor's third wife, whom he married in China at a time when his first two wives were still alive.

**Held:** Appeal dismissed in law. A lawyer gave evidence at the hearing of the appeal to the effect that the sponsor's children are legitimate by Chinese law. It would appear that the sponsor's third marriage may be valid in Canada but there appears no doubt that the children of a polygamous marriage would not be legitimate in Canada or in the Province of Ontario if the sponsor had been domiciled in Ontario as at the date of their births. The Children's Law Reform Act, 1977 does not legitimate the children of unmarried parents or parents who are not legally married according to Canadian law and therefore is of no assistance to the appellant. The children, not being the legitimate children of the sponsor, are therefore not within the family class as defined in the Regulations.

**Coram:** A.B. Weselak (Vice-Chairman), U. Benedetti and G. Tisshaw **Case heard:** Toronto, May 20, July 7, 1981 **Judgment pronounced:** October 7, 1981 **Reasons by:** A.B. Weselak (in English; 3 pp.), concurred in by U. Benedetti and G. Tisshaw **Docket no.:** 80-9432 **Counsel:** M.M. Green, Q.C., for the appellant; L. Williams, Esq., M. Thomas, Barrister and Solicitor, for the respondent.

---

37.8 Oriana Gloria Gonzalez Quiroga v. Minister of Employment and Immigration

**REFUGEE - REDETERMINATION - FEAR OF PERSECUTION BY REASON OF POLITICAL OPINION - APPLICANT CREDIBLE AND TESTIMONY PLAUSIBLE - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, S. 70**

The applicant, a citizen of Chile, claimed to be a refugee by reason of her political opinion. She commenced her political involvement as a member of the Socialist Youth organization. She played an important role in gathering information and financial support for the organization and in distributing an underground socialist publication entitled "Unidad y Lucha". She was arrested and detained on a few occasions. Her organization helped her obtain a passport and her political friends paid her air fare to Canada.

**Held:** Application having been allowed to proceed, applicant is determined to be a Convention refugee. The applicant's story of political and social involvement was plausible. She is fairly well educated, she is a bookkeeper by profession and appeared to be well informed about the underground activities of the Socialist Party. Having considered the evidence as a whole, the Board is of the opinion that the applicant has a well-founded fear of persecution for political reasons.

**Coram:** F. Glogowski (Vice-Chairman), R. Tremblay and G. Loiselle  
Montreal, December 15, 1981  
**Judgment pronounced:** December 15, 1981  
**Reasons by:** F. Glogowski (in English; 3 pp.), concurred in by R. Tremblay and G. Loiselle  
**Docket no.:** 81-1014  
**Counsel:** P. Duquette, Barrister and Solicitor, for the applicant;  
J.R. St-Louis, Esq., for the respondent.

---

37.9 Mohammed Amin Hussein

REFUGEE - REDETERMINATION - JURISDICTION OF BOARD - IN STATUS CLAIM - CLAIM NOT MADE DURING AN INQUIRY PURSUANT TO SUBSECTION 45(1) OF ACT - FACT OF SUCH INQUIRY AND CLAIM CONDITION PRECEDENT TO BOARD'S JURISDICTION

JURISDICTION OF BOARD - REFUGEE - REDETERMINATION - IN STATUS CLAIM - CLAIM NOT MADE DURING AN INQUIRY PURSUANT TO SUBSECTION 45(1) OF ACT - FACT OF SUCH INQUIRY AND CLAIM CONDITION PRECEDENT TO BOARD'S JURISDICTION - IMMIGRATION ACT, 1976, S.C. 1976-77, C. 52, SS. 45(1), (5), 48(1), 70(1), (2)

The applicant, a former citizen of Ethiopia, made a claim to be a refugee at a time when he had valid status in Canada as a visitor (student). His examination under oath was conducted and completed before the expiry of his status. There was no indication in the record that the applicant ever was, or at that stage, could have been, the subject of an immigration inquiry. The question arose as to whether the Board had jurisdiction to entertain his application for redetermination of his claim to be a refugee following the Minister's determination that he was not a refugee.

**Held:** Application dismissed for want of jurisdiction. Although the refusal of the Minister refers to a "claim to refugee status pursuant to subsection 45(1) of the Act", on the face of the record, this claim was never made pursuant to that subsection, since the claimant had never been the subject of "an inquiry". Section 70(1) of the Act refers to a determination by the Minister "pursuant to subsection 45(5)". This latter subsection must be read in the context of section 45 as a whole. Thus, the Minister's determination pursuant thereto must flow from a claim made during an inquiry, and the fact of such an inquiry and claim is a condition precedent to the Board's jurisdiction under subsection 70(1).

M.E.I. v. Hudnik [1980] 1 F.C. 180, 103 D.L.R. (3d) 308 (C.A.); Yanez Delgado, Juan Orinaldo v. M.E.I. (I.A.B. 78-1085), Scott, Houle, Tremblay, November 22, 1978 (See CLIC, No. 3.20, June 27, 1979); Megalli, Mahmoud Taher v. M.E.I. (I.A.B. 78-6132), Scott, Glogowski, Teitelbaum, September 29, 1978 (See CLIC, No. 5.19, August 3, 1979).

**Coram:** J.V. Scott (Chairman), F. Glogowski and R. Tremblay  
January 5, 1982  
**Reasons by:** J.V. Scott (in English; 3 pp.), concurred in by F. Glogowski and R. Tremblay  
**Docket no.:** 81-1273.

---

ISSN 0225-1620

PM









